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IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

10 UNITED STATES OF AMERICA,

11 Plaintiff,

12 v.

13 UNITED MICROELECTRONICS
14 CORPORATION, *et al.*,

15 Defendants.

16 CASE NO.: 3:18-cr-00465-MMC

17
18 **DEFENDANT FUJIAN JINHUA**
19 INTEGRATED CIRCUIT CO., LTD.'S
20 MOTION FOR JUDGMENT OF
ACQUITTAL PURSUANT TO FED. R.
CRIM. P. 29; MEMORANDUM OF
POINTS AND AUTHORITIES IN
SUPPORT THEREOF;

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Judge: The Honorable Maxine M. Chesney
Trial Date: February 28, 2022

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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

3 The prosecution of Jinhua did not arise in a vacuum. On November 1, 2018, then-Attorney
4 General Jeff Sessions announced the “China Initiative”—a Department of Justice project designed
5 to “stand[] up to the deliberate, systematic, and calculated threats posed, in particular, by the
6 communist regime in China, which is notorious around the world for intellectual property theft.” The
7 United States Department of Justice, *Attorney General Jeff Sessions Announces New Initiative to*
8 *Combat Chinese Economic Espionage* (Nov. 1, 2018), [https://www.justice.gov/opa/speech/attorney-](https://www.justice.gov/opa/speech/attorney-general-jeff-sessions-announces-new-initiative-combat-chinese-economic-espionage)
9 [general-jeff-sessions-announces-new-initiative-combat-chinese-economic-espionage](https://www.justice.gov/opa/speech/attorney-general-jeff-sessions-announces-new-initiative-combat-chinese-economic-espionage). He called out
10 Jinhua, boasting of “an indictment alleging economic espionage on the part of a Chinese state-owned,
11 government owned, company . . . to steal trade secrets from Micron, an Idaho-based semi-conductor
12 company.” *Id.* The U.S. government placed Jinhua on the “Entity List” the day before this
13 announcement, banning U.S. companies from exporting parts to Jinhua. (Trial Tr., Vol. XVI, at
14 2944:20-2944:25.) *See Addition of An Entity to the Entity List, Nat’l Archives Fed. Reg.* (Oct. 30,
15 2018), [https://www.federalregister.gov/documents/2018/10/30/2018-23693/addition-of-an-entity-](https://www.federalregister.gov/documents/2018/10/30/2018-23693/addition-of-an-entity-to-the-entity-list)
16 [to-the-entity-list](https://www.federalregister.gov/documents/2018/10/30/2018-23693/addition-of-an-entity-to-the-entity-list).

17 However, after the change in administrations—and, ironically, just days before this trial
18 commenced—the DOJ announced “that it [was] scrapping its China Initiative.” Ryan Lucas, *The*
19 *Justice Department is ending its controversial China Initiative*, NPR (February 23, 2022),
20 <https://www.npr.org/2022/02/23/1082593735/justice-department-china-initiative>. The prejudgment
21 of the China Initiative is borne out by the failure of the government’s proof at trial against Jinhua.
22 There was no Chinese government-led nefarious scheme to steal trade secrets from a United States
23 company. At most, the government has proved crimes by individual employees of a Taiwanese
24 company. The prosecution introduced no evidence that Jinhua had any knowledge of, or participated
25 in, the alleged theft of trade secrets by the Taiwan nationals working for UMC.

26 Despite a cooperation agreement with UMC, the government lacked any percipient witness
27 who could testify directly about the wrongful acts the prosecution seeks to impute to Jinhua. Instead,

1 the government has stretched hearsay exceptions to the breaking point to marshal a patchwork of
2 documents, some without an identified author, and many with no testimony about their meaning from
3 a party to the communication. This Airmail approach presumes the Court will fill in the blanks and
4 draw speculative inferences in the prosecution's favor. The strategy would be questionable even in
5 a civil case where the burden is to prove a scenario was more likely than not. It has fallen far short
6 of the criminal law standard of proof beyond a reasonable doubt.

7 Pursuant to Federal Rule of Criminal Procedure 29, the Court should enter a judgment of
8 acquittal because no rational factfinder could conclude beyond a reasonable doubt that Jinhua is
9 guilty of **any of the charges**. The government failed to prove that:

10 • There was a conspiracy—a criminal agreement—to which Jinhua was a party.

11 • Jinhua and UMC were in a joint venture or, even if they were, that Jinhua could be

12 held responsible for UMC’s employees’ actions.

13 • Stephen Chen committed or knew about any unlawful acts.

14 • Criminal acts could be imputed to Jinhua based its employment of Mr. Chen.

15 • Any other UMC employee, including JT Ho, Neil Lee, and Ray Guo, were ever Jinhua

16 agents or, alternatively, that their alleged criminal acts could be imputed to Jinhua.

17 • An act in furtherance of each of the crimes charged was committed in the United

18 States or that extraterritoriality would comport with due process.

19 | II. FACTUAL BACKGROUND

20 A. The Indictment

21 The Indictment alleged a conspiracy among United Microelectronics Corporation (“UMC”),
22 a Taiwan semiconductor foundry; Defendant Fujian Jinhua Integrated Circuit, Co., Ltd. (“Jinhua”),
23 a purported state-owned enterprise of the People’s Republic of China; and three Taiwan nationals:
24 Stephen Chen, JT Ho, and Kenny Wang, involving the theft of Micron Technology Inc.’s trade
25 secrets. The Indictment alleged that UMC hired Mr. Chen to be a senior vice president, and that Mr.
26 Chen recruited and hired several Micron employees, including Mr. Ho and Mr. Wang, to work for
27 UMC. (Indictment (ECF 1), at ¶¶ 22–23.) Prior to leaving UMC, Mr. Ho allegedly stole Micron trade

1 secrets and used them to support UMC’s design of DRAM technology. (*Id.* at ¶ 24.) Mr. Ho also
 2 allegedly communicated with Mr. Wang, who was still working for Micron, to obtain additional
 3 Micron trade secrets. (*Id.* at ¶ 25.) Mr. Wang also allegedly downloaded trade secrets belonging to
 4 Micron, attempted to mask his theft of trade secrets, quit his job at Micron, began working for UMC,
 5 and used those trade secrets to help develop UMC’s DRAM technology. (*Id.* at ¶¶ 26–30.)

6 The Indictment alleged very little linking Jinhua to the unlawful conduct. The Indictment
 7 alleged that “the PRC formed and funded Jinhua for the purpose of developing, designing, and mass-
 8 producing advanced DRAM technology,” and that Jinhua and UMC entered into an agreement for
 9 Jinhua to provide funding to UMC for the development of DRAM technology that would be
 10 transferred to Jinhua for Jinhua to manufacture. (*Id.* at ¶¶ 19–20, 36.) The Indictment also alleged
 11 that “Chen, UMC, Jinhua, and government officials from the PRC attended a Jinhua/UMC recruiting
 12 fair in the Northern District of California to recruit employees from the United States with semi-
 13 conductor experience to work for both companies in either the research and development or sales or
 14 marketing division,” that “Chen and others from UMC and Jinhua, including the mayors from the
 15 PRC cities of Jinjiang and Quanzhou, also visited several semiconductor equipment-manufacturing
 16 companies in the Northern District of California to facilitate its DRAM production process,” and that
 17 “Chen, UMC, and Jinhua had obtained and were in the continuous control of stolen Micron trade
 18 secrets” while in California. (*Id.* at ¶¶ 31, 46–47.) The Indictment further alleged that “UMC and
 19 Jinhua filed five patents and a patent application concerning DRAM technology that contained
 20 information that was the same or very similar to technology described in” Micron trade secrets. (*Id.*
 21 at ¶ 32, 45.) Finally, the Indictment alleged that in February 2017, Mr. Chen “assumed the post of
 22 President of Jinhua.” (*Id.* at ¶ 34.)

23 The Indictment failed to allege facts showing that Jinhua had any knowledge of or
 24 participated in the theft of Micron trade secrets by Mr. Ho and Mr. Wang. Nor did the Indictment
 25 allege a required element for the offenses charged against Jinhua—that “an act in furtherance of
 26 [each] offense was committed in the United States.” 18 U.S.C. § 1837(2). Nonetheless, the
 27 Indictment alleged three counts against Jinhua:

1 Count One: Conspiracy to Commit Economic Espionage, in violation
 2 of 18 U.S.C. § 1831(a)(5).

3 Count Two: Conspiracy to Commit Theft of Trade Secrets, in violation
 4 of 18 U.S.C. § 1832(a)(5).

5 Count Seven: Economic Espionage (Receiving and Possessing Stolen
 6 Trade Secrets), in violation of 18 U.S.C. §§ 1831(a)(3) and 2.

7 As set forth below, the Court should enter a judgment acquitting Jinhua on all three counts.

8 **B. The Evidence At Trial¹**

9 1. Background

10 Computers contain both logic and memory semiconductor chips. (Trial Tr., Vol. IV, at
 11 685:03-685:05.) Memory stores digital bits, and logic processes those bits in various electronics.
 12 (Trial Tr., Vol. IXX, at 4017:03-4017:24.) “DRAM is effectively the main memory that’s used in
 13 almost every application . . . from refrigerators to cars to televisions, to . . . computers and phones.”
 14 (Trial Tr., Vol. VII, at 1148:08-1148:11.) There are at least hundreds, sometimes thousands, of steps,
 15 called a “process flow,” that describe at a high level how a semiconductor wafer will be processed
 16 into DRAM chips. (*Id.* at 1141:21-1142:04, 1143:03-1143:10.) A wafer contains hundreds of chips.
 17 A fabrication plant (“fab”), or foundry, manufactures chips—that is, it processes the wafer into
 18 DRAM chips. (Trial Tr., Vol. IV, at 686:15-686:17.) Each DRAM semiconductor chip is cut from
 19 the wafer and then packaged into an integrated circuit that can be used in computers, phones, etc.
 20 (Trial Tr., Vol. VII, at 1166:04-1168:04.)

21 Micron Technology was a memory semiconductor manufacturing company headquartered in
 22 Boise, Idaho. (Trial Tr., Vol. I, at 62:08-62:21.) Micron Memory Taiwan (“MMT”) was a subsidiary
 23 of Micron Technology located in Taichung City, Taiwan. (*Id.*) Relevant to this case, two other
 24 memory semiconductor companies were Elpida Memory, Inc., a Japanese company, and Powerchip
 25 Technology Corporation, a Taiwanese company. (*Id.* at 66:03-66:19.) Sometime before 2007, Elpida
 26 and Powerchip formed Rexchip as a Taiwanese joint venture to operate a DRAM fab. (*Id.* at 66:21-
 27

28 ¹ The evidence is presented “in the light most favorable to the prosecution,” as is currently
 29 required. *Jackson v. Virginia*, 443 U.S. 307, 319 (1979).

(cont'd)

1 67:04.) Elpida transferred its DRAM design to Rexchip to manufacture chips in Taiwan, including
 2 DRAM chip designs at the 25-nanometer node.² (Trial Tr., Vol. XVIII, at 3426:23-3427:03.) Stephen
 3 Chen was a senior vice president at Powerchip. (Trial Tr., Vol. XVI, at 3066:18-3066:23.) In March
 4 2007, Mr. Chen was named the general manager of Rexchip. (Trial Tr., Vol. I, at 86:11-86:21,
 5 125:01-125:02; Vol. XVI, at 3066:18-3066:23.)

6 Micron had attempted but failed to design DRAM chips at the 25-nanometer node. (Trial Tr.,
 7 Vol. VIII, at 1398:03-1398:09.) On July 31, 2013, Micron acquired Rexchip and Elpida, and as a
 8 result, acquired Elpida’s 25-nanometer DRAM process—the DRAM process that is at issue in this
 9 case. (Trial Tr., Vol. XVIII, at 3426:23-3427:01.) Micron subsequently used Elpida’s 25-nanometer
 10 process. (Trial Tr., Vol. IXX, at 3945:10-3946:06.) As part of the acquisition, it also acquired
 11 Rexchip and Elpida’s fabs. Notably, the former Rexchip site in Taiwan became MMT’s “Fab 16.”
 12 (Trial Tr., Vol. I, at 65:14-65:25, 194:25-195:05, Vol. XVIII, at 3426:03-3426:22.) As a result of
 13 the acquisition, only three companies in the world produced the vast majority of advanced DRAM
 14 technology—Micron, Samsung, and Hynix. (Trial Tr., Vol. XVI, at 3017:15-3017:18, Vol. IXX, at
 15 3940:02-3940:06.) But Micron’s 25-nanometer technology was a generation behind the 20-
 16 nanometer leading edge technology at the time.³ (Trial Tr., Vol. XX, at 4195:15-4195:23.)

17 After the acquisition, Mr. Chen became the site director for MMT’s Fab 16. (Trial Tr., Vol.
 18 I, at 83:08-84:16.) Sandy Kuo assisted Mr. Chen with communications. (*Id.* at 87:13-87:25.) Four
 19 of the engineers allegedly working at the site were Neil Lee, JT Ho, Kenny Wang, and Ray Guo. (*Id.*
 20 at 95:16-102:06.)

21 On July 31, 2015, Stephen Chen left MMT and, several months later, was employed by UMC
 22 as a senior vice president. (Trial Tr., Vol. I, at 124-125, Vol. XVII, at 3093:15-3093:17.) UMC was
 23 a Taiwanese company and one of the leading foundries in the world. (Trial Tr., Vol. IV, at 686:17-

24
 25 ² A node is a common industry term used to refer to a different generation of process
 26 technology—it is based on “the smallest feature on the silicon wafer.” (Trial Tr., Vol. VII, at
 1143:17-1144:04.)

27 ³ “Leading edge” is an industry term used to describe the “most advanced technology
 28 capability node”—such a node requires the most time and effort to develop. (Trial Tr., Vol. VIII, at
 1408:23-1409:09.)

1 686:25.) UMC had previously been involved in the DRAM business, but transitioned to mostly
 2 working on logic. (*Id.* at 689:01-689:23, 699:24-700:10.) Then, around 2016, an industry consensus
 3 emerged that there were many opportunities in DRAM. (*Id.* at 700:24-701:02.) As a result,
 4 “everybody in the industry tried to get into DRAM.” (*Id.* at 700:22-700:23.)

5 Because semiconductors play a central and important role in the economy, the government’s
 6 expert explained that any large country would want to be competitive in the semiconductor industry.
 7 (Trial Tr., Vol. XVI, at 2901:04-2901:13.) China is no exception. (*Id.* at 2901:14-2901:21.) In fact,
 8 China has set forth an official policy of increasing its domestic production of semiconductor chips
 9 to 70 percent by 2025. (*Id.* at 2908:02-2908:07.)

10 2. The Alleged Conspiracy to Steal Micron Trade Secrets

11 (a) Initiation of The Alleged Conspiracy

12 Much of the government’s evidence consists of printed email exchanges, primarily from the
 13 period of Mr. Chen’s transition from Micron to UMC. The government relies heavily on references
 14 in some of these emails to purported confidential—but non-trade secret—Micron (and some
 15 Samsung and Hynix) DRAM information. For example, on September 14, 2015, Tanaka Yoshinori
 16 sent a document that bears no Micron logo and no confidential marking—that the government
 17 contends is based on a non-trade secret Micron diagram comprising a Micron DRAM roadmap—to
 18 an email address allegedly belonging to Mr. Chen. (Trial Tr., Vol. XVI, at 3044:02–3060:20;
 19 P1046T.) Two days later, Mr. Chen allegedly forwarded this email to Bowen Huang, a UMC
 20 employee. (P1046T.) And that same day, Mr. Huang sent an email to UMC’s chairman, copying Mr.
 21 Chen, with a presentation that included a similar version of the diagram sent by Mr. Tanaka. (Trial
 22 Tr., Vol. XVI, at 3061:06–3063:18; P0707T.) There was also testimony that later UMC DRAM
 23 documents incorporated elements from the forwarded document. (Trial Tr., Vol. XVI, at 3044:09–
 24 3044:16, 3054:21-3056:04.)

25 In October of 2015, Mr. Ho and Mr. Lee left Micron, and, shortly thereafter, joined UMC.
 26 (P0406T; P0417T.) In November of 2015, Mr. Ho sent Mr. Chen various emails containing non-
 27 trade secret information from established DRAM manufacturers, including Micron, Samsung, and

1 Hynix. (Trial Tr., Vol. XVII, at 3172:23-3182:25.) The government argues from some of the emails
 2 that UMC intended to use Elpida's existing DRAM chip (subsequently, Micron's) as the
 3 "benchmark" for its DRAM chip, although other evidence indicates that UMC intended to use
 4 Samsung's DRAM chip as the "benchmark" for its DRAM chip. (Trial Tr. Vol. XVII, at 3209:23-
 5 3226:03, Vol. XIX, at 3908:21-3908:24, Vol. XVIII, at 3468:01-3469:04.) The government also
 6 introduced additional emails from Mr. Ho to Mr. Chen, and argued that these emails contained trade
 7 secrets that mostly matched UMC's eventual final DRAM design. However, these emails contained
 8 technical information, but notably bore no indicia of a competitor's trade secret information. (*Id.* at
 9 3226:21-3229:06, 3241:12-3253:03; P0720; P0731T.)

10 On November 20, 2015, Mr. Chen sent an email to Mr. Ho which stated: "I am thinking to
 11 build a core team from UMC, modules+integration~ 10 members to work with you guys." (P0889T.)
 12 Mr. Ho's response copied Mr. Lee, and stated: "We got it. (Neil's computer is not ready yet, but
 13 already inform him." (*Id.*) Also on November 20, 2015, Mr. Chen emailed UMC's CEO and
 14 explained that he intended "[t]o start preparation for project development," and provided his plan for
 15 moving forward. (Trial Tr., Vol. XI, at 1916:13-1916:22; P0730.0001.) In response, the CEO
 16 suggested giving the project "the name of Project M (meaning Memory and Mainland China)." (Trial
 17 Tr., Vol. XI, at 1918:25-1919:02; P0730.0001.) Project M's stated goal was to create a 25-nanometer
 18 DRAM process technology "from scratch." (Trial Tr., Vol. IXX, at 4004:16-4004:21; P0709T.)

19 (b) UMC Devices

20 Around the time that Mr. Ho and Mr. Lee arrived at UMC, various computer-device
 21 authorizations were obtained. On November 3, 2015, a secretary submitted an application for a
 22 personal computer for a new hire in Fab 12A, a UMC facility in Tainan Science Industrial Park.
 23 (Trial Tr., Vol. III, at 462:16-470:02; P1075T.0003-P1075T.0007.) After several IT employees
 24 approved the request, Mr. Chen—to whom the request was sent as the project supervisor—denied
 25 the request for "change in specifications." (*Id.*) After the request was resubmitted, Mr. Chen
 26 approved it on November 19, 2015. (*Id.*) After further approval by another individual, the computer
 27 was eventually delivered. (*Id.*) On November 20, 2015, another application for a personal computer
 28

1 was submitted—this one specified that it was for Mr. Lee. (Trial Tr., Vol. III, at 457:06-462:15;
 2 P1075T.0009-P1075T.0011.) After IT declined the request, it was resubmitted, and approved by IT.
 3 (Trial Tr., Vol. III, at 457:06-462:15.) Mr. Chen then approved the request, it was further approved
 4 by another individual, and eventually the requested computer was allegedly delivered to Fab 12A.
 5 (*Id.*) At UMC, all requests from vice presidents and higher positions were treated as urgent VIP
 6 requests. (*Id.* at 480:10-480:24.) The applications were treated as “urgent.” (P1075T.0003;
 7 P1075T.0009.)

8 That same month, applications for Mr. Ho and Mr. Lee to receive USB access for specific
 9 computers were filled out by a secretary. (*Id.* at 553:02-554:22, 561:09-561:25.) There was no
 10 testimony about why this request was made or who initially requested that access be provided. Mr.
 11 Lee’s application was approved by the applicant supervisor, and then by Mr. Chen, as Mr. Lee’s
 12 higher level supervisor, and Mr. Ho’s application was approved by Mr. Chen, as Mr. Ho’s direct
 13 supervisor. (*Id.* at 555:13-555:19, 565:07-565:11.)

14 On December 4, 2015, UMC’s IT department received a request to reformat hard drives. (*Id.*
 15 at 567:16-567:20.) Because requests to reformat hard drives were uncommon, JC Cho, a UMC IT
 16 department employee, decided to look at the USB log to determine the USB actions performed by
 17 the users of the computers. (*Id.* at 568:01-568:03.) The initial cause for concern was the potential
 18 leakage of data from UMC’s servers. (*Id.* at 537:08-537:17.) The government has introduced
 19 evidence that this log indicated that the hard drives that were reformatted were used by Mr. Ho and
 20 Mr. Lee and that, between November 16, 2015, and December 4, 2015, USBs were used to access
 21 files with names that corresponded to alleged Micron trade secrets. (Trial Tr., Vol. X, at 1663:12-
 22 1667:22, Vol. XI, at 1959:08-1962:18.) There is no evidence that Mr. Chen ever saw or was told
 23 about this log. The government has also introduced evidence from which it argues that Mr. Ho and
 24 Mr. Lee accessed Micron trade secrets numerous times on various devices. (Trial Tr., Vol. IX, at
 25 1546:21-1618:22.) Emails sent by Mr. Ho during this timeframe also contained alleged trade secrets.
 26 (Trial Tr., Vol. XVII, at 3183:01-3194:20; P0890.)

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1 That same day, applications were submitted by a secretary for Fab 12A for two solid state
2 hard disks. (“SSD”).⁴ (Trial Tr., Vol. II, at 417:04-423:08, Tr., Vol. III, at 451:04-457:05; P1147;
3 P1151.) The applications were eventually approved, and the SSDs were allegedly delivered. (*Id.*)
4 Jinhua does not presently dispute the government’s evidence that these SSDs were replacement hard
5 drives for Mr. Ho and Mr. Lee’s computers. There is no evidence that Mr. Chen approved or even
6 knew about the SSDs. No trade secrets were found on these SSDs.⁵ (Trial Tr., Vol. X, 1760:16-
7 1761:17.)

8 Also on December 4, 2015, an application for two public computers to be delivered to Fab
9 12A was submitted and approved, and eventually the computers were delivered to the IT VIP liaison
10 at Fab 12A. (Trial Tr., Vol. III, at 470:03-476:16; P1146T.) The application, however, did not state
11 for whom the computers were sought, and the application was not delivered to Mr. Chen for approval.
12 (*Id.*) There is some circumstantial evidence, which for present purposes Jinhua does not dispute, that
13 one of these computers was used by Mr. Ho and that trade secrets were found on the computer. At
14 UMC, it was not unusual for departments to request public laptops. (Trial Tr., Vol. III, at 481:13-
15 481:15.) All departments, including IT, used public laptops. (*Id.* at 482:13-18.)

16 Sometime in December 2015, Mr. Chen met with UMC IT employees CS Chang and JC Cho,
17 and he asked about UMC's policy regarding using a personal computer or USB at work. (*Id.* at
18 589:04-589:21.) Mr. Chen also inquired whether a record would be made if information was
19 transferred manually from one computer to another. (*Id.* at 590:15-590:23.)

(c) Project M

21 On December 6, 2015, SF Tzou, a UMC employee, sent an email to various other UMC
22 employees, including Messrs. Ho, Lee, and Chen, with the subject “Create process flow for ‘Project
23 M.’” (Trial Tr., Vol. XI, at 1963:03-1963:18; P0742.0004.) The email explained that there was a
24 “need to create a full process flow steps for ‘Project M.’” and that there would be a meeting on

⁴ An SSD is a more “modern type of laptop hard drive.” (Trial Tr. Vol. IX, at 1546:13-1546:18.)

⁵ The government never even discussed or produced one of the SSDs.

1 December 7, 2015, to do so. (*Id.*) Mr. Chen responded, “I am not available to join tomorrow.” (Trial
 2 Tr., Vol. XI, at 1968:03-1968:09; P0741.0001.) The government has introduced what it purports to
 3 be minutes contained in an Excel spreadsheet from the subsequent meetings, emailed by Mr. Lee to
 4 himself, and has presented evidence indicating that Mr. Ho and Mr. Lee were present at meetings in
 5 which Micron trade secrets—in the form of a so-called Rexchip process flow that was included in
 6 the last tab of the Excel spreadsheet—were allegedly used to create the process flow for Project M.
 7 (Trial Tr., Vol. XI, at 1993:12-2004:16, Vol. XV, at 2681:12-2752:07; P0482T.) However, despite
 8 UMC’s cooperation agreement, the government has not provided any testimony from any individual
 9 who attended the December 7 meeting as to whether the Rexchip flow was displayed or provided to
 10 the attendees, and, in fact, the so-called “minutes” of the meeting do not mention the Rexchip flow
 11 being displayed or disseminated.

12 On each of December 8, 9, and 10, Mr. Tzou sent an email to a group of UMC employees,
 13 not including Mr. Chen, referencing a meeting held that day and attaching what purported to be the
 14 process flow “created today.” (Trial Tr., Vol. XV, at 2786:07-2789:25, 2798:24-2799:03;
 15 P1526T.0001; P1527T.0001; P1528T.0001.) The government’s expert explained that the attached
 16 process flows had “no more Micron information.” (Trial Tr., Vol. XV, at 2801:11-2801:12.)
 17 According to the expert, the “UMC DRAM steps [were] extracted from the Micron document that
 18 they were constructed in and put into a separate document where you don’t have all that Micron
 19 information.” (*Id.* at 2801:17-2801:21.)

20 On December 28, 2015, Mr. Chen sent an email to Mr. Ho, Mr. Lee, and Mr. Tzou, attaching
 21 a “Development milestone” presentation that included slides from the presentation sent by Mr.
 22 Tanaka. (Trial Tr., Vol. XI, at 2012:01-2013:07; P0570T.) In the cover email, Mr. Chen described a
 23 timeline for the development of the two nodes over four years. (*Id.* at 2007:17-2007:20.) Mr. Lee
 24 replied to the email on December 29, 2015, attaching follow up items from a meeting that presumably
 25 occurred that day. (*Id.*) The Project M team then exchanged a series of emails in the first half of
 26 January 2016, discussing “milestones,” DRAM development, and a roadmap. (Trial Tr., Vol. XI, at
 27
 28

1 2005:19-2049:03.) Some emails included timelines which the government's expert testified were, in
 2 his opinion, unrealistic. (Trial Tr., Vol. XX, at 4083:22-4091:11; P0561.)

3 On February 19, 2016, according to evidence introduced by the government, UltraMemory
 4 Inc. ("UMI"), a design company founded by Mr. Adachi, a former Elpida employee, provided Project
 5 M with design rules for a chip even though a design normally comes after a process flow is
 6 completed. (Trial Tr., Vol. XI, at 1898:18–1898:21, Vol. XVII, at 3257:08-3262:02.) On February
 7 14, 2016, Mr. Chen was cc'd on an email in which a UMI employee stated that a design file could
 8 be sent in the coming days. (Trial Tr., Vol. XVII, at 3262:05-3265:12; P0641.) The government
 9 expert alleged that the UMI design was similar to an Elpida design. (Trial Tr., Vol. XVII, at 3267:15-
 10 3270:04.)

11 In addition to introducing evidence that Mr. Ho and Mr. Lee accessed devices containing
 12 Micron trade secrets from the end of 2015 through the beginning of 2017, the government also
 13 introduced evidence concerning Mr. Wang's alleged theft of trade secrets. On March 30, 2016, for
 14 example, Mr. Ho received an email from a Lawrence Huang at UMC asking for advice on wafer
 15 type. (P0834.0003.) That same day, Mr. Ho inquired via LINE chat to Mr. Wang, who was still
 16 working at Micron, "What is our wafer type?" (P0270.0020.) Mr. Wang provided answers, which
 17 Mr. Ho allegedly provided to others at UMC. (*Id.*) Mr. Wang eventually quit Micron and accepted
 18 an offer to work for UMC. (P0270.0007; P0270.0013.)

19 Other emails and documents showed that other Project M participants, including Mr. Chen,
 20 sought to reverse engineer competitors' DRAM technology, including from Samsung and Hynix,
 21 and were looking at the construction of those companies' products. (Trial Tr., Vol. XVIII, at 3455:06-
 22 3456:18; Vol. XVI, at 3016:01-3016:13; Vol. IXX, at 3893:03-3903:18; D3061.) For example, on
 23 January 8, 2016—after Mr. Ho and Mr. Lee purportedly copied Micron's process flow—Mr. Chen
 24 asked Bowen Huang to obtain Samsung and Hynix reverse engineering reports. (Trial Tr., Vol.
 25 XVIII, at 3452:05-3453:15; D4812.) Mr. Chen indicated in an email that he understood Samsung
 26 and Hynix to be the benchmark for Project M. (*Id.* at 3456:19-3457:20; D4812.) And in another
 27 email sent to Mr. Chen, a picture of a DRAM cell was labeled "Reference: SAMSUNG," and stated
 28

1 the source was TechInsights. (Vol. XIX, at 3904:13-3912:12; D3162; D3162.) Other Project M
2 participants were also seemingly unaware of Messrs. Ho, Lee, and Wang's copying of the Micron
3 process flow. On March 3, 2016, Mr. Tzou sent an email in which he stated that UMC had purchased
4 Samsung and Hynix reverse engineering reports, but not Micron's. (Trial Tr., Vol. XVIII, at 3464:08-
5 3466:08; D4817.)

(d) Law Enforcement Involvement

7 In the summer of 2016, Micron informed the FBI in Taiwan that Mr. Wang had left the
8 company, had taken information related to its DRAM technology, and had begun working at UMC.
9 (Trial Tr., Vol. X, at 1769:11-1770:06.) Micron also informed the FBI about other individuals whom
10 it suspected of having also gone to work at UMC. (*Id.* at 1770:06-1770:07.) In the course of the FBI's
11 investigation, it was discovered that Mr. Wang had downloaded alleged Micron trade secrets before
12 quitting his job there. (*Id.* at 1781:17-1808:09.)

13 In August 2016, Micron also reported the alleged trade secret theft to the Taiwanese Ministry
14 of Justice Investigation Bureau (“MJIB”). (Trial Tr., Vol. V, at 737:01-737:12.) On February 7, 2017,
15 the MJIB executed a search warrant for Mr. Wang’s cubicle at UMC, his residence, and any other
16 associated addresses. (*Id.* at 738:23-739:02, 739:18-739:23.) On February 14, 2017, the MJIB
17 executed a second search warrant that included authorization to search Mr. Ho’s cubicle at UMC.
18 (*Id.* at 739:03-739:09.) The MJIB also seized an undated “labor contract” that was purportedly signed
19 by Mr. Ho and Jinhua from an office outside Mr. Ho’s cubicle. (*Id.* at 838:13-839:20.) Various
20 electronic devices were seized in the searches, and for purposes of this motion, Jinhua does not
21 dispute the government’s evidence that alleged trade secrets were found on these devices. Jinhua
22 notes, however, with regard to Mr. Ho, some of the trade secrets were downloaded to devices
23 attributed to him before he joined UMC and before Jinhua was even formed. (Trial Tr., Vol. X, at
24 1758:01-1760:11.)

3. Defendant Jinhua

26 On February 19, 2016, Fujian Electronics & Information Industry Business Startup
27 Investment Partnership, Jinjiang Energy Investment Group Company Limited, and UMC entered

1 into a Project Cooperation Framework Agreement (“Framework Agreement”). (P1023T.0001.) The
 2 agreement provided that UMC’s two counterparties would “set up [a] project company . . . as the
 3 principal for construction, operation and research and development” of a “semiconductor chip
 4 enterprise.” (P1023T.0003.) A “strategic investor recommended by” UMC was to “make a capital
 5 contribution of fifty million US dollars.” (P1023T.0005.) UMC and the strategic investor were to
 6 hold 30 percent of the shares in the project company. (*Id.*) And the Framework Agreement further
 7 provided that the “project company” and UMC would “execute a Technical Cooperation
 8 Agreement.” (P1023T.0004.) However, the Framework Agreement provided that it was only “legally
 9 binding upon the approval or authorization by competent authorities of the parties.” (P1023T.0012.)
 10 This was because the Taiwanese government had to approve UMC’s proposed DRAM development
 11 project. (Trial Tr., Vol. XI, at 2566:14-2566:19.)

12 Shortly thereafter, on February 26, 2016, Defendant Fujian Jinhua Integrated Circuit Co.,
 13 Limited, was established. Various emails and documents show that UMC employees, including
 14 Bowen Huang, were involved in Jinhua’s establishment. (P1040T.0001; P1033T.0001.) There is no
 15 evidence that UMC or a strategic investor contributed any funds to Jinhua or owned any shares in
 16 Jinhua, as required by the Framework Agreement.

17 On May 13, 2016, Jinhua entered into a Technological Cooperation Agreement (“TCA”) with
 18 UMC. Under the TCA, Jinhua was to provide hundreds of millions of dollars in funding to UMC for
 19 the completion of two production lines capable of manufacturing 12-inch DRAM wafers in exchange
 20 for UMC transferring “the technological achievements from the cooperative research and
 21 development . . . to [Jinhua] in their entirety.” (P1193T.0001.) The TCA provided that it
 22 “constitute[d] the complete consensus of the two parties with respect to the matters agreed upon in
 23 the agreement and supersede[d] all previous oral and written agreements and other covenants.”
 24 (P1193T.0006.) Indeed, the TCA was the only agreement submitted for approval to the Taiwanese
 25 government. (Trial Tr., Vol. XI, at 2566:20-2568:14.)

26 The government focused on Mr. Chen’s conduct during this early time period in Jinhua’s
 27 existence, wherein Mr. Chen allegedly performed certain activities. Mr. Chen’s activities during this
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1 time were when Jinhua was in its nascent phases, and were in accordance with § 3.1 of the TCA,
 2 which required UMC provide to Jinhua “with all necessary technical consulting and professional
 3 manpower.” (P1193T.0003.) For example, on June 2, 2016, Sandy Kuo sent an email to Bowen
 4 Huang in which she stated that Mr. Chen “will soon offer the hiring and duty assumption of Jinhua
 5 senior executives.” (Trial Tr., Vol. XIII, at 2301:04-2305:25; P1099T.0001.) Mr. Chen was also
 6 purportedly involved in choosing Jinhua’s logo. (Trial Tr., Vol. XIII, at 2312:01-2313:01; P0816.)
 7 A June 26, 2016, document envisioned Mr. Chen reporting to the Jinhua Board of Directors about
 8 patent applications. (Trial Tr., Vol. XIII, at 2323:24-2324:07; P1030T.0003.)

9 On September 2, 2016, an email containing three contracts—one each for Messrs. Ho, Lee,
 10 and Guo—was sent to Sandy Kuo. (P1089T.0001.) These contracts provided that the individuals
 11 would work in “Tainan, Taiwan,” in a research and development role related to DRAM,
 12 (P1089T.0003; P1089T.0018; P0272.0003), and also envisioned that they would work concurrently
 13 for, and receive a salary from, UMC Taiwan. (P1089T.0006; P1089T.0021; P0272.0007.) The
 14 government has not provided a fully executed contract for Mr. Lee or Mr. Guo. While Mr. Ho’s
 15 contained a signature, it was undated. (P272T.0009.) And while the contract stated that its term
 16 commenced on July 1, 2016, Mr. Ho’s contract was sent to Ms. Kuo on September 2, 2016, and,
 17 one week later, the chats between Mr. Ho and Mr. Wang indicated that Mr. Ho believed he had not
 18 signed the contract. (P0270.0034.)

19 On October 23, 2016, Mr. Chen attended the Chinese American Semiconductors Professional
 20 Association’s (“CASPA”) 25th annual conference at the Santa Clara Convention Center in
 21 California. (Trial Tr., Vol. IV, at 616:18-616:22; P0256.) As Mayor Barry Chang of Cupertino
 22 explained, CASPA connected “both companies and individuals to each other involved in the
 23 semiconductor industry.” (P0255.0010.) The CASPA conference “was a weekend-long event,” and
 24 UMC was a “Platinum” sponsor of the event. (Trial Tr., Vol. IV, at 662:03-662:06, 666:18-666:22.)
 25 One subevent at the three day long CASPA conference was a job recruitment fair. (*Id.* at 617:01-
 26 617:03.) Jinhua made a presentation during the fair, and its main speaker was Albert Wu, who was
 27
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1 introduced as Jinhua's general manager. (*Id.* at 633:14-633:25.) Mr. Wu told the audience that UMC
 2 was developing DRAM and that Jinhua would manufacture it. (*Id.* at 636:07-639:15.)

3 According to the testimony of FBI Special Agent Letitia Wu, Mr. Wu also informed the
 4 audience that Mr. Chen could answer additional questions about potential jobs. (*Id.* at 645:15-
 5 645:17.) Mr. Chen then allegedly spoke for about five minutes. (*Id.* at 645:07-645:13.) In his
 6 remarks, Mr. Chen purportedly expressed confidence in UMC's technology. (*Id.* at 645:17-645:24,
 7 646:07-646:12.) Agent Wu said that Mr. Chen also explained that, "while Jinhua was in its nascent
 8 stages," he was "the head of two divisions, which were the sales and marketing divisions and one of
 9 the operations divisions at Jinhua." (*Id.* at 647:14-647:25.) When Agent Wu approached Mr. Chen
 10 after his remarks, however, he gave her a UMC business card listing him as a UMC senior vice
 11 president. (*Id.* at 648:01-648:08.) Albert Wu's business card listed him as vice general manager of
 12 Jinhua. (*Id.* at 659:20-660:03.)

13 On October 24, 2016, Stephen Chen attended a meeting in Milpitas, California with KLA-
 14 Tencor, a process control instrument provider for the semiconductor industry. (Trial Tr., Vol. XVII,
 15 at 3087:21-3087:23, 3096:02-3096:04, 3098:25-3099:01.) The purpose of the meeting was for Jinhua
 16 to introduce itself, learn about KLA's products, and provide status updates on its products. (*Id.* at
 17 3096:06-3096:11.) At the meeting, Mr. Chen bestowed a gift on behalf of Jinhua to KLA, and
 18 presented information about Jinhua. (*Id.* at 3107:18-3111:17; P1376; P1382; P1381; P1379.) At or
 19 around this time, Brian Trafas of KLA allegedly learned of UMC and Jinhua's "joint relationship."
 20 (Trial Tr., Vol XVII, at 3093:04-3093:07.) After the meeting, the parties continued negotiations—
 21 Mr. Chen was involved in each of KLA's respective negotiations with UMC and Jinhua. (*Id.* at
 22 3122:15-3123:13.) At some point in 2017, Jinhua purchased tools from KLA, though KLA was
 23 unable to fulfill the services due to Jinhua's placement on the Department of Commerce's Entity
 24 List. (*Id.* at 3134:09-3134:11.)

25 At some point in late 2016, Mr. Chen purportedly assumed the position of Jinhua's president.
 26 Minutes from a December 6, 2016, Jinhua meeting referred to Mr. Chen as "President"—though the
 27 minutes also explained that Mr. Chen would remain in Taiwan and that he delegated certain, limited

1 signatory authority to Mr. Wu. (P0613T.0002.) In around late 2016 or early 2017, Mr. Chen informed
2 Mr. Trafas at KLA that he would be transitioning to running Jinhua's facility in China as its CEO.
3 (Trial Tr., Vol. XVII, at 3125:09-3126:06.) On January 11, 2017, Mr. Chen received an email
4 containing a revised Jinhua organizational chart listing him as president. (P1103T.0002.) And by
5 mid-2017, Mr. Trafas understood Mr. Chen to be Jinhua's CEO. (Trial Tr., Vol. XVII, at 3132:15-
6 3132:23.)

4. Post-Indictment

8 The allegations in the Indictment essentially conclude with the February 2017 MJIB raids of
9 UMC and Mr. Chen’s assumption to the Jinhua presidency. (Deft’s Mot. to Exclude Evidence
10 Materially Different from the Facts Alleged in the Indictment (ECF 381).) After the Indictment was
11 returned, in October of 2020, UMC entered into a plea agreement with the government. (Plea
12 Agreement (ECF 148).) The agreement included a provision requiring UMC to cooperate with the
13 government. (*Id.* at ¶ 9.)

14 In the months leading up to trial, pursuant to this agreement, the government learned about
15 two alleged transfers of technology from UMC to Jinhua. At trial, the government introduced
16 evidence of a March 2017 document that circumstantially appeared to have been prepared by UMC
17 to provide Jinhua with a process flow. (Trial Tr., Vol. XVI, at 2950:25-2969:24.) The government
18 also introduced evidence of a September 2018 technology transfer from UMC to Jinhua that
19 contained alleged Micron trade secrets. (*Id.* at 2971:12-3018:03.) Mr. Chen supposedly approved
20 this transfer on Jinhua's behalf.⁶ (Trial Tr., Vol. XVII, at 3319:14-3319:20.)

22 The government's case may be sufficient to send to the trier of fact the question of whether
23 there were offenses committed by Messrs. Ho, Lee, and Wang. But the government's evidence utterly
24 failed to establish Jinhua's responsibility for any such misdeeds. Jinhua's funding from the Chinese

26 ⁶ From this post-indictment timeframe, the government also introduced an August 9, 2018,
27 email from Mr. Chen to a Jinhua email account attaching an allegedly confidential—but non-trade
28 secret—Micron document titled “Mass Market Roadmap DRAM Components.” (Trial Tr., Vol. XIV,
at 2497:07-2499:17; P1422.)

1 government may have fit the then-prevailing profile for targets of programmatic prosecution. But a
 2 profile does not suffice to establish criminal liability. Nor does the fact that Mr. Chen worked for
 3 UMC and later joined Jinhua.

4 **III. ARGUMENT**

5 **A. The Governing Legal Standard**

6 **1. Rule 29 and Insufficiency of the Government's Evidence**

7 Rule 29(a) of the Federal Rules of Criminal Procedure provides that, upon motion by the
 8 defendant following the close of the prosecution's case-in-chief, the court "must enter a judgment of
 9 acquittal for any offense for which the evidence is insufficient to sustain a conviction." Fed. R. Crim.
 10 P. 29.⁷ Under this Rule, "the relevant question is whether, after viewing the evidence in the light
 11 most favorable to the prosecution, *any* rational trier of fact could have found the essential elements
 12 of the crime beyond a reasonable doubt." *Jackson v. Virginia*, 443 U.S. 307, 319 (1979). That is,
 13 "[i]f the evidence is such that [a] reasonable [factfinder] must necessarily have [reasonable] doubt,
 14 the judge must require acquittal." *Curley v. United States*, 160 F.2d 229, 232 (D.C. Cir. 1947); *see also* *Jackson*, 443 U.S. at 318 n.11 (adopting the *Curley* standard).

16 Although the government "need not negate every theory of innocence," when "the evidence
 17 viewed in the light most favorable to the prosecution gives equal or nearly equal circumstantial
 18 support to a theory of guilt and a theory of innocence, then a reasonable [factfinder] must necessarily
 19 entertain reasonable doubt," and an acquittal must be granted. *United States v. Triumph Cap. Grp.,*
 20 *Inc.*, 544 F.3d 149, 158–59 (2d Cir. 2008) (emphasis added) (cleaned up); *see also United States v.*
 21 *Cassese*, 428 F.3d 92, 103 (2d Cir. 2005) (affirming district court's grant of Rule 29 motion where
 22 the prosecution's evidence "was characterized by modest evidentiary showings, equivocal or
 23 attenuated evidence of guilt or a combination of the three"). Therefore, viewing the evidence in the
 24 light most favorable to the government, "when there is an innocent explanation for a defendant's
 25 conduct as well as one that suggests that the defendant was engaged in wrongdoing, the Government

26
 27 ⁷ The standard under Rule 29(a) "applies to both jury and bench trials." *United States v. Magallon-Jimenez*, 219 F.3d 1109, 1112 (9th Cir. 2000); *see also United States v. Salman*, 378 F.3d 1266, 1267–68 n.3 (11th Cir. 2004); *United States v. Pierce*, 224 F.3d 158, 164 (2d Cir. 2000).

1 must produce evidence that would allow a rational jury to conclude beyond a reasonable doubt that
2 the latter explanation is the correct one.” *United States v. Delgado*, 357 F.3d 1061, 1068 (9th Cir.
3 2004) (emphasis added) (overruled on other grounds); see also *Curley*, 160 F.2d at 233 (“[I]f, upon
4 the whole of the evidence, a reasonable mind must be in balance as between guilt and innocence, a
5 verdict of guilt cannot be sustained.”); *United States v. Glenn*, 312 F.3d 58, 70 (2d Cir. 2002) (“[I]f
6 the evidence viewed in the light most favorable to the prosecution gives ‘equal or nearly equal
7 circumstantial support to a theory of guilt and a theory of innocence,’ then ‘a reasonable jury must
8 necessarily entertain a reasonable doubt.’” (citations omitted)).

9 2. An Entity Can Be Held Responsible Only for Criminal Acts of Its Agents
10 Committed Within the Scope of Their Authority And of Which It Had
 Knowledge

“Generally speaking the doctrine of respondeat superior has no application in criminal law.” *Empire Printing Co v. Roden*, 247 F.2d 8, 17 (9th Cir. 1957) (citations omitted). However, in *New York Cent. & Hudson River R.R. v. United States*, 212 U.S. 481 (1909), the Supreme Court established that a corporation can be held criminally liable for “an act done while an authorized agent of the company is exercising the authority conferred upon him.” *Id.* at 494; *see also United States v. Dotterweich*, 320 U.S. 277, 281 (1943); *United States v. Hughes Aircraft Co.*, 20 F.3d 974, 979 (9th Cir. 1994).

18 But because a corporation “can only act through its agents and officers,” the Court explained
19 that it can only be punished based on “the knowledge and intent of its agents to whom it has intrusted
20 authority to act in the subject-matter of [the criminal conduct], and whose knowledge and purposes
21 may well be attributed to the corporation for which the agents act.” *Hudson River*, 212 U.S. at 495;
22 *see also United States v. Beusch*, 596 F.2d 871, 877 (9th Cir. 1979) (“The acts of an agent may be
23 imputed to the principal, but only if it is the agent’s purpose to benefit the principal, thus bringing
24 his acts within the scope of his employment.” (citations omitted)).

25 To show that an agent's knowledge and purpose can be "attributed to the corporation for
26 which the agents act," *Hudson River*, 212 U.S. at 495, "[t]he person whose knowledge is to be
27 imputed must have some relationship to the company—whether director, officer, agent, or

1 employee—which allows the person to obtain the knowledge in the course of the engagement with
 2 the company and within the scope of his or her authority,” *United States v. Josley*, 206 F.3d 144,
 3 159 (1st Cir. 2000) (emphasis added); *see also Curtis, Collins & Holbrook Co. v. United States*, 262
 4 U.S. 215, 222 (1923) (“The general rule is that a principal is charged with the knowledge of the agent
 5 acquired by the agent in the course of the principal’s business.”); *In re ChinaCast Educ. Corp. Sec.*
 6 *Litig.*, 809 F.3d 471, 477 (9th Cir. 2015) (“[A]ll information known by the agent, at least when
 7 received within the scope of authority, is deemed known by the principal.” (quoting Donald C.
 8 Langevoort, *Agency Law Inside the Corporation: Problems of Candor and Knowledge*, 71 U. Cin.
 9 L. Rev. 1187, 1214 (2003))); *see also El Ranco, Inc. v. First Nat’l Bank of Nev.*, 406 F.2d 1205, 1214
 10 n.13 (9th Cir. 1968) (“The general rule is that the principal is chargeable with and bound by the
 11 knowledge of his agent received while the agent is acting within the scope of his authority and which
 12 is in reference to a matter over which his authority extends.”); *Kimbrow v. Atl. Richfield Co.*, 889 F.2d
 13 869, 876 (9th Cir. 1989); *Frankfort Marine, Accident & Plate Glass Ins. Co. v. John B. Stevens &*
 14 *Co.*, 220 F. 77, 79 (9th Cir. 1915) (“The general rule is that notice communicated to, or knowledge
 15 acquired by, officers or agents of corporations when acting in their official capacity, or within the
 16 scope of their agency, becomes notice to or knowledge of the corporation.”); *In re Hellenic Inc.*, 252
 17 F.3d 391, 395 (5th Cir. 2001) (“An agent’s knowledge is imputed to the corporation where the agent
 18 is acting within the scope of his authority and where the knowledge relates to matters within the
 19 scope of that authority.”); *Dye v. Tamko Bldg. Prods., Inc.*, 908 F.3d 675, 685 (11th Cir. 2018);
 20 *United States v. Bank of New England*, 821 F.2d 844, 856 (1st Cir. 1987); *United States v. One Parcel*
 21 *of Real Est. Consisting of Approximately 4,657 Acres, Located in Martin County, Fla.*, 730 F. Supp.
 22 423, 426–27 (S.D. Fla. 1989).⁸

23 ⁸ Neither the Supreme Court nor the Ninth Circuit has provided firm guidance on when
 24 respondeat superior applies in the context of corporate criminal liability. When it comes to
 25 respondeat superior for punitive damages, however, the Supreme Court has adopted the Restatement
 26 of Agency’s limitations. *See Kolstad v. Am. Dental Ass’n*, 527 U.S. 526, 542–43 (1999) (quoting
 27 Restatement (Second) of Agency § 217C). And the Supreme Court has labeled punitive damages
 28 “quasi-criminal.” *Cooper Indus., Inc. v. Leatherman Tool Grp., Inc.*, 532 U.S. 424, 432 (2001)
 (quoting *Pac. Mut. Life Ins. Co. v. Haslip*, 499 U.S. 1, 19 (1991)). Therefore, Jinhua preserves the
 argument that it can only be held criminally liable “for the act of an advisory or managerial person
 acting in the scope of employment.” Restatement (Second) of Agency § 217D (Am. L. Inst. 1958).

1 “[T]o justify imputation, the knowledge must also be material—i.e., important or
 2 significant—to the employee’s duties to the employer.” *Huston v. Procter & Gamble Paper Prods.*
 3 *Corp.*, 568 F.3d 100, 107 (3d Cir. 2009). “In other words, the employee’s knowledge of facts may
 4 be imputed to the employer only if that knowledge is important to the function the employee is
 5 employed to perform.” *Id.*

6 And “when a statute imposes criminal liability on a corporation itself, the relevant personal
 7 knowledge is that of the individual who took the action that the statute criminalizes, or, in appropriate
 8 circumstances, the personal knowledge of the individual who directed or ratified the action taken.”
 9 Restatement (Third) of Agency § 5.03 cmt. d(7) (Am. L. Inst. 2006). Therefore, a corporate defendant
 10 like Jinhua can be held criminally liable only when: (1) an agent knowingly commits a criminal act
 11 (*i.e.*, conspiracy to commit economic espionage, conspiracy to commit trade theft, or economic
 12 espionage); and (2) the act is committed within the agent’s scope of authority to benefit the
 13 corporation.

14 B. **The Court Should Enter a Judgment of Acquittal on Counts I and II Because the**
 15 **Government Has Failed to Prove the Existence of a Conspiracy to Which Jinhua**
was a Party

16 Jinhua is charged with two conspiracy counts: conspiracy to commit theft of trade secrets and
 17 conspiracy to commit economic espionage. But the government’s proof failed to prove beyond a
 18 reasonable doubt that there was a criminal conspiracy to which Jinhua was a party.

19 The Court’s role in assessing the sufficiency of the evidence of conspiracy is crucial here
 20 given the manner in which the government has tried to prove a criminal agreement involving Jinhua.
 21 The government’s case lasted five weeks. During that time, it called expert witnesses, tool vendors,
 22 Micron employees, and UMC IT employees. None of these witnesses, however, had any percipient
 23 knowledge of an agreement by Jinhua to commit a crime. The government also introduced various
 24 written agreements without calling any witnesses who negotiated, executed, or implemented those
 25 agreements. And the government relied on hearsay exception after hearsay exception to introduce
 26 hundreds of emails and other documents that it argues prove a conspiracy. But the documents cannot
 27 speak for themselves. Indeed, the Court spent countless hours parsing documents trying to infer what
 28

1 particular documents meant, to whom they were sent, who received them, and what could be inferred.
 2 But the binders of emails and glossy PowerPoint presentations, at most, prove misconduct by
 3 individual UMC employees. Without proof of a conspiratorial agreement with Jinhua, the
 4 government seeks to convict Jinhua based solely on speculation that it was a party to the wrongdoing
 5 of others. But “evidence is insufficient to support a verdict where mere speculation, rather than
 6 reasonable inference, supports the government’s case, or where there is a ‘total failure of proof of [a]
 7 requisite’ element[.].” *United States v. Nevils*, 598 F.3d 1158, 1167 (9th Cir. 2010) (en banc) (first
 8 alteration in original) (citations omitted).

9 A criminal conspiracy requires “an agreement to accomplish an illegal objective coupled with
 10 one or more overt acts in furtherance of the illegal purpose and the requisite intent necessary to
 11 commit the underlying substantive offense.” *United States v. Melchor-Lopez*, 627 F.2d 886, 890 (9th
 12 Cir. 1980). The law is settled that “there can be no conviction for guilt by association, and it is clear
 13 that mere association with members of a conspiracy, the existence of an opportunity to join a
 14 conspiracy, or simple knowledge, approval of, or acquiescence in the object or purpose of the
 15 conspiracy, without an intention and agreement to accomplish a specific illegal objective, is not
 16 sufficient to make one a conspirator.” *Id.* at 891.

17 Jinhua is a legitimate Chinese company that spent considerable sums to develop and produce
 18 the DRAM technology and chips needed for everyday devices by Chinese consumers. Jinhua faces
 19 this prosecution with the presumption of innocence due all defendants. Yet the government wants to
 20 infer the existence of a criminal conspiracy involving Jinhua from Jinhua’s ordinary business
 21 contacts with UMC and Messrs. Ho, Lee, Guo, and Chen (to the extent those contacts even exist).
 22 Specifically, the government has offered proof of Jinhua and UMC’s business agreement, Jinhua’s
 23 alleged decision to provide a “labor contract” to Messrs. Ho, Lee, and Guo; Jinhua’s alleged retention
 24 of Mr. Chen to help with hiring and negotiating for tools; Jinhua’s eventual hiring of Mr. Chen as
 25 president; and alleged transfers of technology from UMC to Jinhua on March 20, 2017, and in
 26 September 2018. In the government’s telling, Jinhua’s efforts to conduct legitimate business
 27 somehow add up to a criminal conspiracy. But the government cannot connect these dots. The
 28

1 evidence does not support—let alone prove beyond a reasonable doubt—a coherent narrative in
 2 which Jinhua’s business activities crossed the line from a manufacturing venture to a criminal
 3 conspiracy. To infer a criminal agreement from these circumstances—with no percipient witness
 4 and no incriminating Jinhua document—is simply too far a leap.

5 *First*, UMC and Jinhua’s agreement to the TCA on May 13, 2016, is insufficient to establish
 6 a criminal conspiracy. A “conspiracy” requires the participants to reach an agreement on a “common
 7 purpose.” *United States v. Bibbero*, 749 F.2d 581, 587 (9th Cir. 1984). For example, in *United States*
 8 *v. Rosenblatt*, 554 F.2d 36 (2d Cir. 1977), the court held that even where two defendants “agreed” to
 9 commit criminal offenses, but they subjectively agreed on committing different offenses, they could
 10 not be convicted of conspiracy. *Id.* at 39–40; *see also United States v. Leonard*, 777 F. Supp. 2d
 11 1025, 1037 (W.D. Va. 2011) (same). “By definition, market transactions—whether in legal or illegal
 12 markets—benefit both parties, but we do not assume, *ab initio*, that they carry with them the excess
 13 baggage of conspiracy,” absent proof of knowledge. *United States v. Townsend*, 924 F.2d 1385, 1392
 14 (7th Cir. 1991); *see also United States v. Richmond*, 700 F.2d 1183, 1190 (8th Cir. 1983) (“[B]usiness
 15 association *without more* is insufficient to establish the existence of or participation in a conspiracy.”)
 16 (collecting cases)). “If it were otherwise, companies that sold cellular phones to teenage punks who
 17 have no use for them other than to set up drug deals would be in trouble, and many legitimate
 18 businesses would be required to monitor their customers’ activities.” *United States v. Blankenship*,
 19 970 F.2d 283, 285 (7th Cir. 1992).

20 UMC is one of the leading independent semiconductor foundries in Asia, and it had
 21 previously produced DRAM technology. Jinhua wanted to manufacture DRAM. Jinhua’s agreement
 22 with UMC therefore made perfect business sense. The synergy of Jinhua’s funding with UMC’s
 23 technological capacity provided a logical path toward realizing legitimate business goals.⁹ No
 24 witness or document suggests that Jinhua embarked on this path with a criminal objective. Jinhua
 25

26 _____
 27 ⁹ Notably, Applied Materials—a manufacturer of machines or “tools” that process wafers
 28 into semiconductor chips—reviewed UMC’s DRAM development plan in 2016 and had no concerns
 that UMC would acquire the DRAM technology by theft or other nefarious means. (Trial Tr., Vol.
 IX, at 1527:11–1528:04.)

1 did not—and could not—have had knowledge of the alleged plan of several UMC engineers to use
 2 stolen trade secrets to fulfill UMC’s obligation under the TCA. Jinhua had only been formed a couple
 3 of months prior to the execution of the TCA, and there is not a scintilla of evidence that any agent of
 4 Jinhua obtained knowledge of the conspiracy in the course of performing duties on behalf of Jinhua.
 5 Even under the government’s theory of the case, Mr. Ho did not become Jinhua’s agent until, at the
 6 earliest, July 1, 2016. *But see infra* § III.C.2. Even viewing the evidence in the light most favorable
 7 to the government, as discussed below in § III.C.1(b), the absolute earliest that an inference of Jinhua
 8 controlling Mr. Chen can be drawn is October 2016, and, there is no admitted evidence that Mr. Chen
 9 was considered Jinhua’s president until, at the earliest, December 2016. Any other attempts to allege
 10 that Mr. Chen was acting on Jinhua’s behalf is rank speculation and does not satisfy the stringent
 11 standard required for proof in a criminal case. Because the government has not shown that Jinhua’s
 12 “actions were motivated by anything other than economic self-enrichment”—it legitimately sought
 13 to contract with one of the leading independent semiconductor foundries in Asia to design a new
 14 DRAM chip—the TCA provides no support for finding that Jinhua conspired with UMC. *Gonzalez*
 15 v. *Google LLC*, 2 F.4th 871, 900 (9th Cir. 2021); *see also United States v. Ulbricht*, 31 F. Supp. 3d
 16 540, 554 (S.D.N.Y. 2014).

17 *Second*, Messrs. Ho, Lee, and Guo’s purported labor contracts with Jinhua do not either
 18 suffice to establish that Jinhua joined any criminal conspiracy. There is no evidence that the
 19 purported labor contracts were some sort of agreement to commit economic espionage or theft of
 20 trade secrets. At best, by their terms, the most the government can allege is that the labor contracts
 21 were for a role with Jinhua, and they provided that Messrs. Ho, Lee, and Guo would work
 22 concurrently for, and receive a salary from, UMC Taiwan. (P1089T.0006; P1089T.0021;
 23 P0272.0007.) There is no evidence that the labor contracts were actually an agreement by Jinhua to
 24 have Messrs. Ho, Lee, and Guo commit economic espionage and theft of trade secrets in their
 25 concurrent UMC roles. For example, in prosecutions for conspiracy to distribute narcotics, “[a]
 26 relationship of mere seller and buyer, with the seller having no stake in what the buyer does with the
 27 goods, shows the absence of a conspiracy, because it is missing the element of an agreement for

1 redistribution.” *United States v. Loveland*, 825 F.3d 555, 562 (9th Cir. 2016). Similarly, an agreement
 2 between Jinhua and Messrs. Ho, Lee, and Guo for the individuals to be involved in research and
 3 development is missing an agreement for them to commit economic espionage and theft of trade
 4 secrets in their UMC jobs. *See United States v. Espinoza-Valdez*, 889 F.3d 654, 657–58 (9th Cir.
 5 2018) (“Despite the evidence of Espinoza-Valdez’s presence with two unknown men in a known
 6 drug-smuggling corridor close to the Mexican border near what appeared to be a camp for drug
 7 trafficking scouts, as well as the seizure of items that were suspicious in this context, there was
 8 insufficient evidence for a jury to find beyond a reasonable doubt that Espinoza-Valdez entered into
 9 a conspiratorial agreement to import or distribute marijuana.”). Indeed, between the signing of the
 10 TCA and Messrs. Ho, Lee, and Guo’s purported labor contracts with Jinhua—which, accepting the
 11 government’s contentions, took effect on July 1, 2016—the government has not shown that any
 12 Jinhua agent obtained knowledge of the alleged conspiracy through their Jinhua position.¹⁰

13 *Third*, even accepting that Jinhua retained Mr. Chen to help with hiring at the October 2016
 14 CASPA job fair and to negotiate for tool purchases, no reasonable inference of a criminal agreement
 15 by Jinhua can be drawn. We address in detail at § III.C. below the government’s several efforts to
 16 infer criminal knowledge on the part of Mr. Chen and to impute Messrs. Chen, Ho, Lee, and Guo’s
 17 purported knowledge to Jinhua; those efforts are unavailing. Neither Jinhua nor Mr. Chen, therefore,
 18 knew about the alleged trade secrets when they reached an agreement. In any event, according to the
 19 government’s evidence, Jinhua engaged Mr. Chen to hire Jinhua employees and purchase tools for
 20 Jinhua’s future facility. This alleged agreement was separate from alleged conspiracy to commit
 21 economic espionage and theft of trade secrets occurring contemporaneously at UMC’s Taiwan
 22 facility. Mr. Chen’s limited engagement does not demonstrate an “agreement to commit a crime.”

23
 24

25 ¹⁰ Moreover, as for Count I, there is also no evidence that Messrs. Ho, Lee, and Guo had any
 26 knowledge of Jinhua’s alleged association with the Chinese government. Indeed, they allegedly
 27 began stealing and using trade secrets before Jinhua was even formed. Therefore, even if there is
 28 evidence of an agreement between Jinhua and Messrs. Ho, Lee, and Guo to commit trade secret theft,
 there is no evidence of an agreement to “benefit any foreign government, foreign instrumentality, or
 foreign agent.” 18 U.S.C. § 1831(a).

1 *United States v. Lennick*, 18 F.3d 814, 819 (9th Cir. 1994); *see also Espinoza-Valdez*, 889 F.3d at
 2 657–58.

3 *Fourth*, even crediting the government’s allegation that Jinhua entered into an agency
 4 relationship with Mr. Chen when he became Jinhua’s president (which, drawing every inference in
 5 the government’s favor, was, at the earliest, in December 2016), this relationship did not create a
 6 criminal agreement by Jinhua based on Mr. Chen’s purported prior acts and prior mental state. The
 7 government still has failed to call a witness or introduce a document showing that Jinhua and Mr.
 8 Chen reached an agreement to commit economic espionage or theft of trade secrets. The
 9 government’s evidence of Mr. Chen assuming the Jinhua presidency is based on various contextless
 10 emails and documents making reference to Mr. Chen’s purported position. But no witness has
 11 testified about this relationship, and there are no documents spelling out Mr. Chen’s role. There
 12 simply is not enough evidence to assume that Jinhua’s agreement with Mr. Chen for him to become
 13 Jinhua’s president also contained an agreement that he would commit the charged offenses. *See*
 14 *Richmond*, 700 F.2d at 1190 (“The government did not produce any direct evidence, e.g., statements
 15 or admissions of the appellants, which would indicate a common plan or agreement.”); *Espinoza-*
 16 *Valdez*, 889 F.3d at 658–59 (“Given the dearth of evidence of an agreement to import or distribute
 17 marijuana between Espinoza-Valdez and the two unknown men observed on the mountain—or
 18 anyone else—the government has not met its burden of proving his participation in a conspiracy
 19 beyond a reasonable doubt. . . . While it is possible, perhaps even probable, that Espinoza-Valdez
 20 was on the mountaintop to act as a scout for drug traffickers, a reasonable suspicion or probability
 21 of guilt is not enough.”); *Freeman v. HSBC Holdings PLC*, 413 F. Supp. 3d 67, 88 (E.D.N.Y. 2019)
 22 (“Even assuming Defendants knew of Iran’s myriad ties to, and history of, supporting terrorist
 23 organizations, including Hezbollah, the Court cannot infer from this fact that Defendants agreed to
 24 provide illegal financial services to Iranian financial and commercial entities”). Nor is there
 25 evidence that Jinhua knew about the alleged unlawful acts when it made Mr. Chen president.

26 *Fifth*, once Mr. Chen became Jinhua’s president, the government has not shown any act
 27 affirmatively joining Jinhua to the alleged conspiracy. “[O]ne cannot join a conspiracy through

1 **apathy . . .**” *Kemper v. Deutsche Bank AG*, 911 F.3d 383, 395 (7th Cir. 2018) (emphasis added).
 2 This principle “is especially important in business dealings.” *Id.* Putting aside that the government
 3 has not shown that Mr. Chen participated in, or even had knowledge of, the use of Micron trade
 4 secrets in designing UMC’s DRAM technology (or that he obtained any such knowledge in his role
 5 as Jinhua’s president), *see infra* § III.C.1., there is also no evidence that Mr. Chen took any
 6 affirmative steps once he was Jinhua’s president to join Jinhua to the alleged conspiracy. The only
 7 evidence about Jinhua’s actions concerning trade secrets after Mr. Chen’s assumption of the Jinhua
 8 presidency is Jinhua—through unidentified agents—accepting the transfers of technology from
 9 UMC. But merely continuing to comply with an economically beneficial agreement signed before
 10 Mr. Chen became Jinhua’s agent does not demonstrate that Jinhua (through an agent) reached an
 11 agreement with UMC (or any individual) to join the conspiracy, or even that Jinhua obtained
 12 knowledge of the conspiracy. Nor could Mr. Chen wear his Jinhua hat to reach an agreement with
 13 Mr. Chen wearing his UMC hat. Therefore, there is insufficient evidence from Mr. Chen’s role as
 14 Jinhua president to hold Jinhua liable for the conspiracy counts.

15 *Sixth*, the government cannot establish a conspiratorial agreement by Jinhua by virtue of an
 16 alleged joint venture between Jinhua and UMC. (*See, e.g.*, United States’ Opp. to Def.’s Mot. to
 17 Exclude Hearsay Statements in the “Meeting Minutes” Contained in Ex. P0482 (ECF 395), at 9–10.)
 18 According to the government, “[i]n a joint venture, the corporate venturers are partners and thus
 19 principals and agents of each other and liable for each other’s acts and statements during the course
 20 or and in furtherance of the joint venture.” (*Id.* at 9.) Therefore, the government insists that “Jinhua
 21 is liable for the acts and statements of UMC . . . in furtherance of Project M,” which encompasses
 22 the acts and statements of all of UMC’s agents, including Messrs. Chen, Ho, Lee, Guo, and Wang.
 23 (*Id.* at 10.) However, the government’s argument is meritless because: (1) a party to a joint venture
 24 is only criminally liable for its co-venturer’s actions when it has knowledge of the act; and (2) there
 25 was no joint venture between Jinhua and UMC.

26 A joint venturer is criminally liable only if it had knowledge of its co-venturer’s criminal
 27 conduct. As the government has noted, “[a]s a general rule the substantive law of partnerships is

1 applicable in determining the rights and liabilities of joint venturers.” *Bd. of Trs. of W. Conf. of*
 2 *Teamsters Pension Tr. Fund v. H.F. Johnson, Inc.*, 830 F.2d 1009, 1015 (9th Cir. 1987) (quoting
 3 *Stone v. First Wyoming Bank*, 625 F.2d 332, 340 (10th Cir. 1980)). But while the government has
 4 argued that partners are liable for each other’s acts and statements made during and in the furtherance
 5 of the partnership, that is not the law. In fact, while partners have “joint liability for contract, tort,
 6 and other civil liabilities . . . [p]artners are not liable for the criminal acts of their co-partners unless
 7 they possess guilty knowledge of the criminal act.” J. William Callison & Maureen A. Sullivan,
 8 *Partnership Law & Practice: General & Limited Partnerships*, § 14:7 (2021-2022); *see Levin v.*
 9 *United States*, 5 F.2d 598, 603 (9th Cir. 1925) (“It is true that one partner cannot be prosecuted for
 10 crime committed by his copartner; but if a partnership, with the knowledge of all its members
 11 engaged in an unlawful enterprise or business, all are equally guilty”); *see also Sleight v. United*
 12 *States*, 82 F.2d 459, 461 (D.C. Cir. 1936) (“A partner is not liable for the criminal acts of a copartner
 13 unless he possesses guilty knowledge of the criminal act of his copartner or is an accessory thereto
 14 either before or after the fact. The liability of copartners in civil cases, for the acts of each other,
 15 respecting partnership affairs, does not attach to criminal transactions.”); *United States v. Ansani*,
 16 138 F. Supp. 454, 460 (N.D. Ill. 1956) (“It is well settled law that a partner, although liable for his
 17 partner’s torts committed in the course of the partnership’s business, is not liable for the criminal
 18 acts of a co-partner unless he possesses guilty knowledge of the criminal act of his co-partner or is
 19 an accessory thereto either before or after the fact.”), *aff’d* 240 F.2d 216 (7th Cir. 1957). And, as
 20 explained below, when Jinhua entered into the TCA (and, in fact, at all relevant times), it lacked
 21 knowledge of the alleged criminal acts perpetrated by agents of UMC. *See infra* § III.C. Therefore,
 22 the government’s joint venture theory fails.

23 What is more, Jinhua and UMC were never co-venturers. “A joint venture exists when there
 24 is an ‘agreement between the parties under which they have a community of interest, that is, a joint
 25 interest, in a common business undertaking, an understanding as to the sharing of profits and losses,
 26 and a right of joint control.’” *Resolution Tr. Corp. v. BVS Dev., Inc.*, 42 F.3d 1206, 1214 (9th Cir.
 27 1994) (quoting *Connor v. Great W. Savs. & Loan Ass’n*, 69 Cal. 2d 850, 863 (1968)) (emphasis
 28

1 added); *see also Gold v. Dermouflage, Inc.*, 100 F.3d 962 (9th Cir. 1996) (table); *Martinez v.*
 2 *Gonzalez*, 878 F.2d 1438, 1989 WL 76928, at *1 (9th Cir. 1989) (table).

3 However, the TCA did not provide for profit sharing. The TCA required Jinhua to allocate a
 4 \$300 million equipment, freight, and installation budget and to provide UMC with \$400 million for
 5 research and development, and provided that once UMC completed two production lines capable of
 6 manufacturing 12-inch DRAM wafers, “the technological achievements from the cooperative
 7 research and development by the two parties shall be transferred to [Jinhua] in their entirety,” with
 8 Jinhua “bear[ing] the relevant shipping costs.” (P1193T.0001, P1193T.0002, P1193T.0003.)
 9 Nowhere did the TCA provide for UMC to receive profits from Jinhua’s use of the production lines,
 10 or for UMC to cover any associated losses. Nor did the TCA title itself a joint venture agreement.
 11 Therefore, because the TCA did not contemplate UMC “participat[ing] or intend[ing] to participate
 12 in any profits or losses . . . as a matter of law no joint venture existed.” *Blue Circle Atl., Inc. v. Hill*
 13 *Top Devs., Inc.*, 30 F.3d 139, 1994 WL 399713, at *3 (9th Cir. 1994) (table); *see also Martinez*, 878
 14 F.2d 1438, 1989 WL 76928, at *2.¹¹

15 Moreover, the single invocation of the phrase “joint venture” by the presumably Chinese and
 16 Taiwanese drafters of the Framework Agreement (or at least the translators of the agreement) in
 17 relation to the envisioned future agreement is irrelevant.¹² (P1023T.0007.) The provisions of the
 18 Framework Agreement—executed before Jinhua even existed—differed drastically from reality. The
 19

20 ¹¹ Although evidence of UMC and Jinhua acting jointly has no bearing on whether their
 21 relationship matched the legal definition of “joint venture,” such actions were merely fulfilling
 22 obligation under the arms’ length contractual negotiation that resulted in the TCA. Evidence that the
 23 parties jointly contracted for chip design services from UMI merely shows that compliance with the
 24 TCA’s provision that “the two parties will jointly select a competent design services company” so
 25 as “[t]o ensure a complete integration of the design and manufacturing technology for the [DRAM]
 26 wafer.” (P1193T.0002.) The parties jointly meeting with semiconductor equipment manufacturers
 27 reflects the understanding in the TCA that the technology would be produced by UMC and then
 28 transferred to Jinhua. (P1193T.0001.) The parties jointly filed patents because they each bargained
 for the right to “jointly acquire all patent rights.” (P1193T.0004.) Evidence that UMC employees,
 including Mr. Chen, performed work for UMC merely shows UMC complying with its obligation to
 provide “professional manpower.” (P1193T.0003.) There was nothing nefarious about Jinhua and
 UMC’s collaboration.

29 ¹² The one other reference to a “joint venture” referred to Jinhua itself—not the envisioned
 30 TCA in which Jinhua was to enter with UMC once it was formed. (P1023T.0015.)

(cont’d)

1 involved parties chose not to follow the Framework Agreement. *See In re Hoag Urgent Care-Tustin,*
 2 *Inc.*, No. 21-55452, 2022 WL 486630 (9th Cir. Feb. 17, 2022) (explaining that even if parties
 3 “initially contemplate[]” a joint venture, the executed agreement is what governs); *see also*
 4 *Associated Aircraft Parts, Inc. v. Lockheed Corp.*, 959 F.2d 239, 1992 WL 73164, at *1–2 (9th Cir.
 5 1992) (table); *HK China Grp., Inc. v. Beijing United Auto. & Motorcycle Mfg. Corp.*, 417 F. App’x
 6 664, 666 (9th Cir. 2011). UMC neither invested in Jinhua, nor controlled Jinhua shares.¹³ Thus, the
 7 parties chose to only submit the TCA to the Taiwanese government for approval—rendering the
 8 Framework Agreement not “legally binding.” (Trial Tr., Vol. XI, at 2566:20-2568:14;
 9 P1023T.0012.) And, significantly, recognizing the shift, the parties agreed that the TCA—which did
 10 not include profit sharing—“constitute[d] the complete consensus of the two parties with respect to
 11 the matters agreed upon in the agreement and supersede[d] all previous oral and written agreements
 12 and other covenants.” (P1193T.0006.) (emphasis added).

13 In sum, the government’s novel joint venture theory is unavailing. Jinhua does not presently
 14 dispute that the alleged theft and use of trade secrets by individuals UMC employees can be imputed
 15 to UMC. But this liability cannot then be imputed to Jinhua based on its contractual relationship with
 16 UMC. Jinhua lacked knowledge of the alleged criminal conduct committed by UMC employees,
 17 and, in any event, UMC and Jinhua did not have a joint venture relationship.

18 C. **The Court Should Enter a Judgment of Acquittal As To All Counts Because the**
 19 **Government Has Failed to Prove a Crime or Knowledge of an Individual that**
Can Be Imputed to Jinhua

20 The government has attempted to rely on the actions of several alleged agents—Messrs.
 21 Chen, Ho, Lee, and Guo—to impute criminal liability to Jinhua. To do so, the government’s burden
 22 was to establish that one of these individuals committed each of the elements of the charged offenses,
 23 and that: (1) the individual was in an agency relationship with Jinhua at the time of the act; (2) the
 24 agent acted within the scope of his authority provided by Jinhua and the act was material to those
 25

26 ¹³ It is worth noting that the profit sharing provision in the Framework Agreement envisions
 27 the parties to the Framework Agreement—not the parties to the eventual TCA—sharing profits.
 28 (P1193T.0005.)

1 duties; and (3) Jinhua, via the agent, had the requisite statutory knowledge. This is a burden the
2 government has hardly addressed in their case in chief, let alone come close to meeting.

1. Stephen Chen

4 The government's attempt to impute liability to Jinhua based on Stephen Chen's conduct is
5 unavailing. The government has failed to prove that Mr. Chen committed or had knowledge of any
6 criminal acts, that he was Jinhua's agent at the time of the alleged acts, or that any alleged knowledge
7 or criminal acts could be imputed to Jinhua. Therefore, Jinhua cannot be convicted based on the
8 evidence introduced about Mr. Chen.

(a) The government failed to show that Mr. Chen committed any criminal acts or had knowledge of the commission of criminal acts

The government has presented no evidence showing that Mr. Chen was participant or had any knowledge of the alleged use of trade secrets by Mr. Ho, Mr. Wang, or any other contributor to Project M. The government has attempted to cast a cloud over Mr. Chen by introducing various emails which he received or sent that contained Micron information. But the government has not presented any evidence showing that Mr. Chen knowingly received or sent trade secrets.

The sparse evidence showing Mr. Chen receiving and sending non-trade secret Micron information does not demonstrate that he separately did the same with trade secrets. Use of non-trade secrets perhaps shows conduct subject to hindsight criticism—the government might want to label Mr. Chen a “bad man.” Oliver Wendell Holmes, *The Path of the Law*, 10 Harv. L. Rev. 457, 461 (1897). But the law is a “prophecy” that tells a “bad man” “that if he does certain things he will be subjected to disagreeable consequences,” *i.e.*, that notwithstanding ethics or morality, “in one case and not in the other some further disadvantages, or at least some further consequences, are attached to the act by the law.” *Id.*; *see also Exxon Shipping Co. v. Baker*, 554 U.S. 471, 502 (2008). Because the law prohibits the use of trade secrets only, Mr. Chen was not prohibited from using non-trade secret information—even confidential information from competitors. *See Windsor v. United States*, 384 F.2d 535, 535–37 (9th Cir. 1967) (holding that a defendant’s “involvement in an unsavory, high-pressure, fly-by-night scheme for the promotion of land sales” was insufficient to establish that “he was a party to or aware of that conduct of his codefendants which elevated this exercise in caveat

1 emptor to the level of an outright swindle"); *United States v. McDonald*, 576 F.2d 1350, 1359 (9th
 2 Cir. 1978) (same); *United States v. Piepgrass*, 425 F.2d 194, 199 (9th Cir. 1970) (same). And
 3 evidence establishing that Mr. Chen chose to conform to the letter of the law cannot establish that
 4 Mr. Chen separately knew that other individuals were crossing the line he may have, viewing the
 5 evidence in the light most favorable to the government, chose to toe. Evidence that Mr. Chen
 6 possessed, reviewed, or transferred non-trade secret information is a red herring that the Court should
 7 discard. *See Briceno v. Scribner*, 555 F.3d 1069, 1079 (9th Cir. 2009) (explaining that the "lack of
 8 evidence" as to an "evidentiary link" is fatal to the government's case).

9 Equally insufficient is evidence of Mr. Chen receiving emails with some information which
 10 its expert purportedly compared to Micron trade secrets and opined that some alleged trade secrets
 11 were included. (Trial Tr., Vol. XVII, at 3226:21-3229:06, 3241:12-3253:03; P0720; P0731T.) The
 12 government cannot rely on information uncovered by its expert blessed with the gift of hindsight and
 13 a reason to inquire. The government hired the expert to hunt for references to Micron trade secrets
 14 as part of an extensive criminal investigation. Mr. Chen cannot be deemed to have learned everything
 15 that the expert trolled for years after the emails in question. Even assuming that the government's
 16 expert is correct, none of the evidence provides any basis for inferring that Mr. Chen knew that Mr.
 17 Ho (and Mr. Lee and Mr. Wang) incorporated trade secrets—as opposed to confidential
 18 information—into the process flow shared with him. *See Phillips v. United States*, 356 F.2d 297, 303
 19 (9th Cir. 1965) ("[S]o-called 'constructive' notice or knowledge of a circumstance, based upon the
 20 actual knowledge of a co-conspirator, agent of employee, has no tendency, circumstantially or
 21 otherwise, to prove criminal intent."); *see also United States v. Davis*, 506 F. App'x 612, 613 (9th
 22 Cir. 2013) (holding that "mere involvement" is insufficient to establish knowledge of the
 23 conspiracy). Indeed, after the December 7, 2015, meeting that Mr. Chen did not attend, the
 24 subsequent versions of UMC's process flow contained "no more Micron information." (Trial Tr.,
 25 Vol. XV, at 2801:11-2801:12.) There is no hint that Mr. Chen was on notice of illegal conduct, so
 26 he had no reason or duty to conduct the examinations and analyses undertaken by the government's
 27 expert.

1 Nor does evidence that Mr. Chen approved USB access for Mr. Ho and/or Mr. Lee establish
 2 that he knew the improper purpose for which they allegedly used that access. As a supervisor of Mr.
 3 Ho and Mr. Lee, Mr. Chen received the applications as a matter of course. He approved the
 4 applications, but there is no indication that he knew what Mr. Ho and Mr. Lee intended. Indeed, Mr.
 5 Chen was not the only person who had to approve the applications. Approving a procedural request,
 6 innocent on its face, does not provide any basis for finding that Mr. Chen knew about Mr. Ho and
 7 Mr. Lee's use of stolen trade secrets. The government's expert himself explained that "it's not
 8 unusual in the industry for engineers" to take home confidential information on USB devices,
 9 including a copy of the process flow, and that some companies, in fact, "encourage" it so that
 10 employees can work from home.¹⁴ (Trial Tr., Vol. XVIII, at 3431:19-3433:05.) DRAM engineers
 11 could have other legitimate reasons for using USBs, including vendor meetings, outside
 12 presentations, and sharing information with customers. (Trial Tr., Vol. I, at 177:16-178:04.)
 13 Likewise, the evidence about the public computers proves nothing about Mr. Chen. There was no
 14 evidence indicating that he knew about or approved the computers. And public computers were
 15 commonly used by various UMC departments. (Trial Tr., Vol. III, at 480:25-484:18.)

16 The government incorrectly claims that Mr. Chen should have been aware that Project M's
 17 timeline for the development of DRAM technology was infeasible or skipped certain steps. The
 18 suggested inference is strained at best and insufficient to establish Mr. Chen's knowledge of his
 19 subordinates' wrongdoing. The government's argument assumes that UMC began developing the
 20 process flow in the December 2015 meetings. Their only evidence for that, however, is a translated
 21 email from Mr. Tzou stating the "need to create a full process flow steps for 'Project M.'" (Trial Tr.,
 22 Vol. XI, at 1963:03-1963:18; P0742.0004.) And the definition of "create" is "to bring into
 23 existence"—not to initiate. *Create*, Merriam-Webster.com (2022), <https://www.merriam-webster.com/dictionary/create>. There is no evidence that UMC employees had not begun developing

25
 26 ¹⁴ Evidence of an email from Mr. Tzou to Mr. Chen suggesting that he save a particular file
 27 because Mr. Ho told him "that his computer is going to format" utterly fails to show that Mr. Chen
 28 knew or had any reason to know the alleged nefarious reason for Mr. Ho to reformat his computer.
 (P0738T.0001.) To the contrary, Mr. Tzou's matter of fact manner of delivering the information
 indicates a belief that the reformatting was a routine, innocuous IT matter.

1 the process flow well before December 2015, and the meetings held in December 2015 were merely
 2 to build off the prior work and bring the process flow into existence.

3 In any event, Mr. Chen was a high-level supervisor; although there is some evidence of him
 4 responding to isolated technical questions via email, he was not in the trenches developing the
 5 process flow. He did not even attend the December 7, 2015, meeting at which Mr. Ho and Mr. Lee
 6 purportedly used Micron’s process flow to develop UMC’s. (Trial Tr., Vol. XI, at 1968:03-1968:09;
 7 P0742.0004.) Moreover, while Mr. Chen was knowledgeable about DRAM technology, he had never
 8 previously sought to create a process flow—indeed, Rexchip did not even conduct research and
 9 development. (Trial Tr., Vol. VII, at 1206:12-1207:20.) And he knew that Project M was seeking to
 10 develop a “lagging” 25-nanometer node—the leading technology was 20-nanometer nodes—which
 11 was “easier to do.” (Trial Tr., Vol. IXX, at 3975:16-3976:10.) The government reaches too far in
 12 arguing that there is sufficient evidence to conclude that Mr. Chen knew that Project M’s DRAM
 13 development timelines were unfeasible without the use of trade secrets. Criminal liability cannot be
 14 imputed to Mr. Chen based only on rank speculation as to his state of mind.

15 In fact, Mr. Chen’s lack of knowledge or participation is evidenced by the government’s lack
 16 of evidence showing that Mr. Chen in any way initiated the alleged theft of trade secrets. Mr. Ho and
 17 Mr. Wang downloaded many of the alleged trade secrets before they or Mr. Chen were employed at
 18 UMC. As early as May 2014—almost a year and a half before Mr. Chen began working at UMC—
 19 the forensic data indicates that Mr. Ho copied one of the alleged trade secrets to his personal USB.
 20 (Trial Tr. Vol. X, at 1759:14-1760:16.) Other trade secrets were allegedly placed on devices in Mr.
 21 Ho and Mr. Wang’s possession in early 2015. (P0377; P0359; P0365; P0375.) This evidence shatters
 22 the government’s theory of the case. Mr. Chen did not take the UMC job, and then ask Mr. Ho and
 23 Mr. Wang to steal trade secrets to help UMC build DRAM. For whatever reason—perhaps to further
 24 their own careers—Mr. Ho and Mr. Wang had saved Micron trade secret information while at Micron
 25 that they took with them, and then accessed once in their UMC roles, and then, viewing the evidence
 26 in the light most favorable to the government, they allegedly worked together to obtain more of the
 27
 28

1 alleged trade secret documents once Mr. Ho began work on Project M. But the government cannot
 2 show that Mr. Chen was anything but an unknowing bystander to Mr. Ho and Mr. Wang's actions.

3 In sum, Mr. Chen hired talented engineers with whom he had previous relationships, but there
 4 is no support—and certainly not enough support to infer criminal liability—for finding beyond a
 5 reasonable doubt that he encouraged, was a participant, or even knew of the misdeeds allegedly
 6 perpetrated by those engineers. The government seeks to pile weak inference upon weak inference
 7 to reach the conclusion that Mr. Chen knew about the trade secrets. *See Gonzales v. Gipson*, 701 F.
 8 App'x 558, 561–62 (9th Cir. 2017) (holding that “a speculative and weak chain of inferences” is
 9 insufficient to convict). However, a closer look at Mr. Chen's conduct over the years in which he
 10 was employed at UMC fails to show any knowledge on his part of the misconduct committed by
 11 some of his subordinates. Millions of documents have been produced in this case. The government
 12 has received Mr. Chen's UMC custodial file and his email files; yet not a single file or document
 13 shows that he knew about the alleged possession and use of trade secrets. Essentially, the
 14 government's evidence seeks to impute liability to Mr. Chen by virtue of his proximity with the
 15 actual offenders. But “the doctrine of respondeat superior has no application in criminal law.” *Empire*
 16 *Printing*, 247 F.2d at 17. Therefore, the government has failed to present sufficient evidence of Mr.
 17 Chen's knowledge of, or participation in, the charged offenses.

18 (b) The government failed to show that Mr. Chen was Jinhua's agent
 19 during the relevant times

20 The government incorrectly asserts that Mr. Chen was always Jinhua's agent, and, therefore,
 21 any of his illegal acts or knowledge of illegal acts could be imputed to Jinhua. However, even if there
 22 were evidence of Mr. Chen engaging in, or having knowledge of, illegal activity, an agency
 23 relationship still requires assent and control. The government has only shown that, at most, Mr. Chen
 24 was Jinhua's limited agent for hiring purposes in October 2016, and has failed to show that Mr. Chen
 25 became a full agent of Jinhua before, viewing the evidence in the light most favorable to the
 26 government, at the earliest, December 2016.

27 “Agency is the fiduciary relationship that arises when one person (a ‘principal’) manifests
 28 assent to another person (an ‘agent’) that the agent shall act on the principal's behalf and subject to

1 the principal's control, and the agent manifests assent or otherwise consents so to act." Restatement
 2 (Third) of Agency § 1.01. That is, "[a] relationship of agency is not present unless the person on
 3 whose behalf action is taken has the right to control the actor." *Id.* § 1.01 cmt. (f)(1). Some relevant
 4 factors for determining whether the purported agent is controlled by the principal are

5 [1] the skill required; [2] the source of the instrumentalities and tools;
 6 [3] the location of the work; [4] the duration of the relationship
 7 between the parties; [5] whether the hiring party has the right to assign
 8 additional projects to the hired party; [6] the extent of the hired party's
 9 discretion over when and how long to work; [7] the method of
 10 payment; [8] the hired party's role in hiring and paying assistants; [9]
 11 whether the work is part of the regular business of the hiring party;
 12 [10] whether the hiring party is in business; [11] the provision of
 13 employee benefits; and [12] the tax treatment of the hired party.

14 *Nationwide Mut. Ins. Co. v. Darden*, 503 U.S. 318, 323–24 (1992) (citation omitted); *see also*
 15 *Barnhart v. New York Life Ins. Co.*, 141 F.3d 1310, 1312–13 (9th Cir. 1998); Restatement (Third) of
 16 Agency § 7.07 cmt. f.

17 Prior to Jinhua's formation in February 2016, no agency relationship could have existed
 18 between Mr. Chen and Jinhua. A nonexistent entity can neither manifest assent nor exercise control.
 19 And between Jinhua's formation and the minimal evidence, accepted by Jinhua for present purposes,
 20 of Mr. Chen assuming the Jinhua presidency in December 2016, the government has also failed to
 21 show the existence of an agency relationship.¹⁵ To be sure, the government has shown that Mr. Chen
 22 had some involvement in Jinhua's operations during this timeframe. But this evidence falls well short
 23 of establishing that Mr. Chen and Jinhua assented to an agency relationship under which Jinhua
 24 controlled Mr. Chen.

25 Under the TCA, UMC was obligated to provide Jinhua "with all necessary technical
 26 consulting and professional manpower." (P1193T.0003.) Evidence that Mr. Chen performed tasks
 27 like commenting on Jinhua's logo merely shows that Mr. Chen, as a senior vice president at UMC,
 28 was fulfilling UMC's obligations under the TCA.

26 ¹⁵ The government has at time indicated that Mr. Chen was a Jinhua board member during
 27 this timeframe. However, the government introduced no evidence to support this claim. In any event,
 28 "directors are neither the shareholders' nor the corporation's agents." Restatement (Third) of Agency
 § 1.01 cmt. (f)(2).

1 Likewise, to perform the obligations under the TCA, after a meeting attended by Jinhua and
 2 UMC, recognizing the “extreme shortage of talent in the IC field and fierceness in the competition,”
 3 at an August 16, 2016, Jinhua meeting, Mr. Chen was authorized “to conduct initial evaluation of
 4 the qualifications and salary levels” for prospective employees . (P1026T.0004.)

5 Understood with this context, Mr. Chen’s attendance at the CASPA job fair two months after
 6 this authorization does not establish a general agency relationship with Jinhua for all purposes.
 7 CASPA “was a weekend-long event, and the Jinhua recruiting event was just one portion of it.” (Trial
 8 Tr., Vol. IV, at 662:03-662:06.) UMC, however, was a “Platinum” sponsor of the event. (*Id.* at
 9 666:18-666:22.) Mr. Chen attended the job fair. And because Mr. Chen was overseeing a significant
 10 project at UMC for which Jinhua was an important client, and had agreed to help out with hiring,
 11 Mr. Chen attended and supported Jinhua’s presentation at the job fair. Indeed, Mr. Chen handed
 12 attendees UMC business cards, while Albert Wu, who was introduced as Jinhua’s general manager,
 13 had Jinhua business cards. (*Id.* at 633:14-633:25, 648:01-648:07, 656:24-657:10, 668:15-668:19.)

14 To be sure, Agent Wu testified that Mr. Chen described himself as Jinhua’s “head of two
 15 divisions, which were the sales and marketing divisions and one of the operations divisions,” and
 16 that “he would be the division head and the hiring decider for people that were interested in working
 17 for Jinhua.” (*Id.* at 647:14-647:18.) And KLA understood Mr. Chen to be working for both UMC
 18 and Jinhua. (Trial Tr., Vol. XVII, at 3127:16-3128:03.) However, there was no evidence presented
 19 that Jinhua had any right to control Mr. Chen. *See* Restatement (Third) of Agency § 1.01 cmt. f(1)
 20 (“A relationship of agency is not present unless the person on whose behalf action is taken has the
 21 right to control the actor.”). To the contrary, Agent Wu’s testimony was that Mr. Chen was merely
 22 helping out “while Jinhua was in its nascent stages.” (Trial Tr., Vol. IV, at 647:14-647:18.) And this
 23 testimony was in accord with Mr. Chen’s role that was spelled out in the August 16, 2016, meeting.

24 In any event, at most, any October 2016 agency relationship was limited to Jinhua retaining
 25 Mr. Chen for a limited purpose, as described by Agent Wu. “People often retain agents to perform
 26 specific services.” Restatement (Third) of Agency § 1.01 cmt. c. And “[i]t is the function delegated
 27 to the corporate officer or agent which determines his power to engage the corporation in a criminal

1 transaction.” *C.I.T. Corp. v. United States*, 150 F.2d 85, 89 (9th Cir. 1945). Therefore, even if there
 2 were a limited agency relationship between Mr. Chen and Jinhua in October 2016, Jinhua could only
 3 potentially be held responsible for Mr. Chen’s illegal acts and knowledge while he was acting as
 4 Jinhua’s agent for hiring and potentially for negotiating for tools—not for all his activities as UMC’s
 5 agent.

6 Finally, once Mr. Chen assumed the Jinhua presidency, Jinhua does not presently dispute that
 7 he was a Jinhua agent. *See Restatement (Third) of Agency* § 1.01 cmt. c (“The elements of common-
 8 law agency are present in the relationships between employer and employee, corporation and
 9 officer . . .”). But, as explained above, the government has failed to show that Mr. Chen took any
 10 action in his role as Jinhua’s president sufficient to link Jinhua to the criminal conduct. *See supra*
 11 § III.B.

12 (c) The government failed to show that Mr. Chen’s alleged knowledge
 13 of, or participation in, the conspiracy occurred in the scope of his
 purported Jinhua authority

14 Even if Mr. Chen was a member of the alleged conspiracy at UMC and was Jinhua’s agent
 15 prior to his appointment as Jinhua’s president, his knowledge of, or involvement in, the conspiracy
 16 still cannot be imputed to Jinhua because at no point during Jinhua’s alleged agency relationship
 17 with Mr. Chen, did he obtain knowledge of the alleged conspiracy or commit a criminal act “in the
 18 course of [his] engagement with [Jinhua] and within the scope of his . . . authority.” *Josleyn*, 206
 19 F.3d at 159; *see also Curtis*, 262 U.S. at 222 (“The general rule is that a principal is charged with the
 20 knowledge of the agent acquired by the agent in the course of the principal’s business.”); *In re
 21 ChinaCast.*, 809 F.3d at 477; *El Rancho*, 406 F.2d at 1214 n.13; *Kimbro*, 889 F.2d at 876; *Frankfort*,
 22 220 F. at 79; *In re Hellenic Inc.*, 252 F.3d at 395; *Dye*, 908 F.3d at 685; *Bank of New England*, 821
 23 F.2d at 856; *One Parcel of Real Est.*, 730 F. Supp. at 426–27.

24 The government has argued that Mr. Chen purportedly initiated the conspiracy upon
 25 assuming his role with UMC in September 2015—months before Jinhua was formed in February
 26 2016. The government has alleged that Mr. Chen was consistently kept in the loop by the Project M
 27 team. But this alleged criminal knowledge and acts all occurred while he was acting in his position
 28

1 as a senior vice president at UMC. There is no evidence that Mr. Chen received knowledge of the
 2 alleged conspiracy, or joined the conspiracy, while committing an act Jinhua “authorized [him] to
 3 perform, occur[ing] substantially within the authorized limits of time and space, and . . . actuated at
 4 least in part, by a desire to serve [Jinhua].” *United States v. Demauro*, 581 F.2d 50, 54 n.3 (2d Cir.
 5 1978) (quoting Prosser, *Torts*, 352 (2d ed. 1955)); *see also United States v. Gold*, 743 F.2d 800, 823
 6 (11th Cir. 1984); *United States v. Cincotta*, 689 F.2d 238, 241 (1st Cir. 1982); *United States v.*
 7 *Automated Med. Labs., Inc.*, 770 F.2d 399, 406 (4th Cir. 1985). And “where an agent obtains
 8 knowledge while acting outside the scope of his agency . . . the court will not impute the agent’s
 9 knowledge to the corporation,” *United States v. One Parcel of Land Located at 7326 Highway 45*
 10 *North, Three Lakes, Oneida County, Wisconsin*, 965 F.2d 311, 316 (7th Cir. 1992), and an act outside
 11 the scope of the agent’s authority cannot be imputed to the principal, *see, e.g., Beusch*, 596 F.2d at
 12 877.

13 Moreover, even if Mr. Chen knew about the criminal conduct, was Jinhua’s agent, and gained
 14 material knowledge in the scope of his Jinhua duties, that knowledge also could not be imputed to
 15 Jinhua under the “adverse-interest exception” to the ordinary rule that an agent’s knowledge is
 16 imputed to the principal. When an agent gains knowledge material to their scope of duties, under the
 17 “adverse-interest exception,” “notice of a fact that an agent knows or has reason to know is not
 18 imputed to the principal if the agent acts adversely to the principal in a transaction or matter,
 19 intending to act solely for the agent’s own purposes or those of another person.” Restatement (Third)
 20 of Agency § 5.04.

21 Despite elements of cooperation between UMC and Jinhua envisioned in the TCA—
 22 necessary when one party develops technology and the other implements and commercializes it—
 23 UMC was still fundamentally the seller, and Jinhua the buyer. Any seller has adverse interests to the
 24 buyer. This is particularly so where, as here, a seller sells stolen technology to an unwitting buyer.

25 Jinhua entered into an agreement with UMC to lawfully develop DRAM technology. Under
 26 the agreement, Jinhua paid UMC hundreds of millions of dollars to develop the technology.
 27 Unbeknownst to Jinhua, however, UMC engineers—for present purpose, assuming Mr. Chen as

1 well—decided to take an unlawful shortcut. Whether they took the shortcut to lower UMC’s costs
 2 or, as the government has intimated, to further their own career prospects, this shortcut was directly
 3 adverse to Jinhua’s interest. According to the government, money was not an issue for Jinhua—it
 4 had the financial backing of the Fujian province. Jinhua’s interest was being able to produce
 5 semiconductor chips using DRAM technology. As this proceeding, the Taiwanese criminal
 6 proceeding, the related civil cases, and Jinhua’s placement on the Department of Commerce’s Entity
 7 List demonstrate, taking a shortcut was not in Jinhua’s interest. Jinhua has lost the substantial sums
 8 it invested in the project and has not been able to develop DRAM technology. It cannot even purchase
 9 tools from American companies. Even if Mr. Chen were a member of the conspiracy or knew about
 10 the conspiracy, his dual agency with UMC and Jinhua meant that his UMC interest was adverse to
 11 Jinhua and rebuts any presumption that he reported UMC’s unlawful conduct to Jinhua. Mr. Chen
 12 was compensated by UMC for his work on Project M, and he owed duties of confidentiality to UMC.
 13 He plainly had interests adverse to Jinhua. His knowledge thus cannot be imputed to Jinhua. *See*
 14 *Ruberoid Co. v. Roy*, 240 F. Supp. 7, 10 (E.D. La. 1965) (“Greene not only acted in his own monetary
 15 interest, but acted adversely to the interest of his principal by perpetrating a scheme which eventually
 16 would result in the loss of a customer and generate a significant amount of ill will towards his
 17 principal.”).

18 2. JT Ho, Neil Lee, and Ray Guo

19 The government incorrectly argues that Messrs. Ho, Lee, and Guo were Jinhua’s agents, and
 20 accordingly, their knowledge of, and participation in, the trade secret theft can be imputed to Jinhua.
 21 In support, the government argues that Messrs. Ho, Lee, and Guo each signed labor contracts with
 22 Jinhua. However, for several reasons, the government’s argument is meritless.

23 First, the contract purporting to be Mr. Guo’s provides that “[t]his contract is established after
 24 being sealed or signed by both parties,” (P1089T.0006) and Mr. Lee’s provides that “[t]his contract
 25 shall take effect following the Parties’ signature or seal.” (P1089T.0018.) But neither contract is
 26 signed. Therefore, the government has failed to show the existence of a binding contract between
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1 Jinhua and either Mr. Lee or Mr. Guo.¹⁶ *See Fontana v. Chef's Warehouse Inc.*, 16-CV-06521-HSG,
 2 2017 WL 2591872, at *3 (N.D. Cal. June 15, 2017) (“When it is clear . . . that the proposed written
 3 contract would become operative only when signed by the parties[], the failure to sign the agreement
 4 means no binding contract was created.” (quoting *Basura v. U.S. Home Corp.*, 98 Cal. App. 4th 1205,
 5 1216 (2002)); *see also Pacey v. McKinney*, 125 F. 675, 680 (9th Cir. 1903); *Hardwood Package*
 6 *Co. v. Courtney Co.*, 253 F. 929, 931 (4th Cir. 1918) (“But it is equally well settled that an unsigned
 7 contract cannot be enforced by either of the parties, however completely it may express their mutual
 8 agreement, if it was also agreed that the contract should not be binding until signed by both of
 9 them.”); *Hamilton Foundry & Mach. Co. v. Int'l Molders & Foundry Workers Union of N. Am.*, 193
 10 F.2d 209, 213 (6th Cir. 1951); *PCS Sales (USA), Inc. v. Nitrochem Distrib. Ltd.*, 128 F. App’x 817,
 11 818 (2d Cir. 2005).

12 Second, even if the contracts were all valid, the government has failed to establish that
 13 Messrs. Ho, Lee, or Guo were ever Jinhua’s agents. Even accepting that the “labor contracts” were
 14 agreed to by Messrs. Ho, Lee, and Guo, there is no evidence that Jinhua was entitled to exercise any
 15 control by virtue of the labor contracts. The purported contracts provided that Messrs. Ho, Lee, and
 16 Guo would work in “Tainan, Taiwan”—not at a Jinhua facility in China. (P1089T.0003;
 17 P1089T.0018; P0272.0003.) They also envisioned that Messrs. Ho, Lee, and Guo would work
 18 concurrently for, and receive a salary from, UMC Taiwan. (P1089T.0006; P1089T.0021;
 19 P0272.0007.) The contracts were perhaps intended to supplement Messrs. Ho, Lee, and Guo’s UMC
 20 salaries in order to further Jinhua’s significant investment in UMC’s DRAM production. Without
 21 percipient witness testimony, there is no indication that Jinhua retained any right to control these
 22 individuals.

23 Third, Mr. Ho’s contract is undated. And there is significant uncertainty as to when it was
 24 actually signed. The contract states that its term commenced on July 1, 2016. (P0272.0001.) Yet the

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 26 ¹⁶ The government has also introduced virtually no evidence tying Mr. Guo to the alleged
 27 conspiracy. Besides being the recipient of emails similar to some of those received by Mr. Chen and
 28 purportedly working closely with Mr. Ho and Mr. Lee, there is no evidence that he joined the
 conspiracy. Once again, the government appears to be relying on “mere association with members
 of a conspiracy” to establish liability. *Melchor-Lopez*, 627 F.2d at 891.

1 email purportedly containing the three unsigned contracts for Sandy Kuo to acknowledge was sent
 2 on September 2, 2016. (P1089T.0001.) But on September 9, 2016, Mr. Ho indicated that he had not
 3 signed the contract. According to LINE chat messages introduced by the government, Mr. Ho told
 4 Mr. Wang: “Today the big boss spoke to me about signing the contract. Still the same, have to sign
 5 for four years.” (P0270.0034.) Therefore, the government’s evidence fails to establish when Mr. Ho
 6 actually signed the labor contract and allegedly became Jinhua’s agent.

7 Fourth, even if Messrs. Ho, Lee, and Guo signed the labor contracts, their knowledge of the
 8 trade secret theft and their participation in such theft could not be imputed to Jinhua. None of these
 9 individuals gained knowledge about the trade secret theft or committed the charged offenses while
 10 acting “within the scope of [their] authority” with Jinhua. *In re ChinaCast*, 809 F.3d at 477 (citation
 11 omitted); *see also Hudson River*, 212 U.S. at 495; *Josleyne*, 206 F.3d at 159; *El Rancho*, 406 F.2d at
 12 1214 n.13; *Kimbrow*, 889 F.2d at 876; *Frankfort*, 220 F. at 79. Their knowledge and participation
 13 while the labor contracts purportedly existed was not within the scope of authority provided by the
 14 labor contracts—it was within their UMC roles. By their terms, however, the labor contracts were
 15 for separate activities—the contracts provided that Messrs. Ho, Lee, and Guo could “work
 16 concurrently and a receive a salary from UMC Taiwan, although such arrangement in the
 17 aforementioned unit shall not affect . . . [the] completion of the work for [Jinhua].” (P1089T.0006;
 18 P1089T.0021; P0272.0007.) And the government has not shown any knowledge of the theft of trade
 19 secrets or commission of the charged offenses in the scope of authority provided by the Jinhua labor
 20 contracts. In fact, because of the government’s trial-by-email approach, the only evidence about
 21 Messrs. Ho, Lee, and Guo’s purported relationship with Jinhua is from the documents purporting to
 22 be labor contracts. Therefore, Messrs. Ho, Lee, and Guo’s criminal knowledge and participation in
 23 the alleged offenses cannot be attributed to Jinhua by virtue of the labor contracts.

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1 **D. The Court Should Enter a Judgment of Acquittal As To All Counts Because the**
 2 **Government Has Neither Alleged Nor Proved That “An Act In Furtherance of**
 3 **The Offense Was Committed In The United States,” And Extraterritorial**
 4 **Application of §§ 1831 and 1832 Would Also Violate Due Process**

5 The government has both failed to allege in the Indictment or prove at trial an essential
 6 element of §§ 1831 and 1832—that “an act in furtherance of the offense was committed in the United
 7 States.” 18 U.S.C. § 1837(2). And, moreover, extraterritorial application of §§ 1831 and 1832 in this
 8 case based on the evidence introduced at trial would violate due process. Therefore, the Court should
 9 dismiss the Indictment or enter a judgment of acquittal as to all counts.

10 The government’s case is built on conduct that did not occur here, in the United States. All
 11 the alleged acts of theft of Micron’s trade secrets, UMC’s development of technology allegedly using
 12 Micron’s trade secrets, and the alleged transfer of that technology to Jinhua, occurred either in
 13 Taiwan or China. Indeed, there have already been substantial criminal proceedings in Taiwan—a
 14 forum that allowed for percipient witnesses with knowledge of the facts alleged in this case to testify.

15 Section 1837 rebuts the “presumption against extraterritoriality,” *RJR Nabisco, Inc. v. European Cnty.*, 579 U.S. 325, 335 (2016) (citation omitted), by providing that a foreign defendant
 16 can be charged under §§ 1831 and 1832 for conduct occurring outside the United States if “an act in
 17 furtherance of the offense was committed in the United States,” 8 U.S.C. § 1837(2). Section 1837(2),
 18 therefore, is an element of the offenses charged against Jinhua. *See, e.g., United States v. Gipe*, 672
 19 F.2d 777, 779 (9th Cir. 1982); *see also United States v. Read*, 918 F.3d 712, 718 (9th Cir. 2019); *cf.*
 20 *Rehaif v. United States*, 139 S. Ct. 2191, 2196 (2019).

21 Yet, the government has never so much as cited or otherwise referred to § 1837(2)’s
 22 requirement of an “act in furtherance of the offense . . . committed in the United States” at any point
 23 during this case, including the Indictment, proposed jury instructions, any motion, or at trial. The
 24 government’s apparent unawareness of this element has had a massive impact on this case—the
 25 Indictment failed to allege this element and the evidence offered at trial failed to establish it. The
 26 failure to include this element in the Indictment requires dismissal of the Indictment. And the
 27 government’s failure to prove this element at trial requires the Court to enter a judgment of acquittal.

1 1. The Indictment is Deficient Because It Failed To Charge that “Act In
 2 Furtherance of The Offense Was Committed In The United States”

3 “[A]n indictment or information which does not set forth each and every element of the
 4 offense fails to allege an offense against the United States.” *United States v. Morrison*, 536 F.2d 286,
 5 287 (9th Cir. 1976) (citing *United States v. Debrow*, 346 U.S. 374 (1953)); *see also United States v.*
 6 *Carll*, 105 U.S. 611, 612 (1881). Therefore, “[a]n indictment’s failure to recite an essential element
 7 of the charged offense is not a minor or technical flaw . . . but a fatal flaw requiring dismissal of the
 8 indictment.” *United States v. Pernillo-Fuentes*, 252 F.3d 1030, 1032 (9th Cir. 2001) (emphasis
 9 added) (internal quotation and citation omitted); *see also United States v. Perlaza*, 439 F.3d 1149,
 10 1153, 1160–61, 1178 (9th Cir. 2006) (reversing convictions because the government did not “allege
 11 in the indictment and prove to a jury beyond a reasonable doubt” the required statutory domestic
 12 nexus requirement); *cf. Vendavo, Inc. v. Price f(x) AG*, No. 17-cv-06930-RS, 2018 WL 1456697, at
 13 *4 (N.D. Cal. Mar. 23, 2018) (holding that the “territorial . . . limits” under § 1837(2) are
 14 “foundational to the existence of a viable . . . claim.”); *Beijing Neu Cloud Oriental Sys. Tech. Co. v.*
 15 *IBM*, 21 Civ. 7589 (AKH), 2022 WL 889145, at *4–5 (S.D.N.Y. Mar. 25, 2022) (same).

16 Here, the Indictment failed to allege the element of the charged offenses that “an act in
 17 furtherance . . . was committed in the United States.” 18 U.S.C. § 1837(2). As is usual, for each
 18 count, the Indictment opened by providing a timeframe for the offense, naming the defendants
 19 charged, and using “the language of the statute . . . in the general description of an offense.” *Russell*
 20 *v. United States*, 369 U.S. 749, 765 (1962). Count I tracked the elements of § 1831(a)(5), Count II
 21 tracked the elements of § 1832(a)(5), and Count VII tracked the elements of § 1831(a)(3) and (2).
 22 (Indictment (ECF 1), at ¶¶ 17, 51, 63.) But the statutory language used by the Indictment completely
 23 failed to include § 1837(2)’s requirement that “an act in furtherance of the offense was committed in
 24 the United States.” 18 U.S.C. § 1837(2).

25 Indeed, the Indictment does not cite § 1837(2), and it contains the phrase “[i]n furtherance”
 26 only once. The single “Overt Acts” paragraph of Count II provides: “In furtherance of the conspiracy
 27 and to effect its objects, defendants committed the overt acts alleged in paragraphs 34 through 49,
 28 among others, in the Northern District of California and elsewhere.” (Indictment (ECF 1), ¶ 53.) But

1 this language is not enough to rescue Count II.¹⁷ The charging paragraph of Count II does not include
 2 an “in furtherance” element. (*See id.* ¶ 51.) And the lone “in furtherance” mention refers to the
 3 “Northern District of California” rather than the “United States.” The reference to the “Northern
 4 District of California” is plainly an effort to establish proper venue—not some oblique way of
 5 satisfying § 1837(2). *See Fed. R. Crim. P.* 18.¹⁸ In any event, “uncertainty or ambiguity” in “set[ting]
 6 forth all the elements necessary to constitute the offence intended to be punished” dooms the
 7 indictment. *Carll*, 105 U.S. at 612.

8 Moreover, because the elements paragraph of Count II did not include the “in furtherance”
 9 requirement, the grand jury could have returned the Indictment based on any one of the twelve overt
 10 acts that allegedly occurred in Taiwan and China. The “grand jury was designed to secure” a
 11 defendant’s right to know “what was in the minds of the grand jury at the time they returned the
 12 indictment”—*i.e.*, whether there was probable cause for all elements of the offenses for which an
 13 indictment was returned. *Russell*, 369 U.S. at 770. The failure of the Indictment returned against
 14 Jinhua to allege that an act in furtherance of each offense occurred in the United States “renders the
 15 indictment constitutionally defective,” and requires dismissal of the Indictment. *See United States v.*
 16 *Kurka*, 818 F.2d 1427, 1431 (9th Cir. 1987) (citation omitted)); *United States v. Keith*, 605 F.2d 462,
 17 464; *United States v. Omer*, 395 F.3d 1087, 1088–89 (9th Cir. 2005).¹⁹

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21 Even if the “in furtherance” language of Count II were considered sufficient, it would not
 22 save Counts I and VII, where no such language appears. *See, e.g.*, *United States v. Perez*, 962 F.3d
 420, 440–41 (9th Cir. 2020); *United States v. Spinner*, 180 F.3d 514, 515–16 (3d Cir. 1999); *United*
23 States v. Hooker, 841 F.2d 1225, 1231 (4th Cir. 1988).

24

25 The general description paragraphs of Counts I and VII that repeat the applicable elements
 26 of § 1831 but do not include mention or citation to § 1837(2)’s requirement that “an act in furtherance
 27 of the offense was committed in the United States,” open with the phrase: “. . . in the Northern
 28 District of California and elsewhere, defendants . . .” (Indictment (ECF 1) ¶¶ 17, 63.) This reference,
 however, does not set forth the element in § 1837(2) that an act in furtherance of the offense occurred
 in the United States, and is clearly the government’s standard venue provision.

29

30 Notice of the missing element—from, for example, a “bill of particulars” or “open file
 31 discovery”—“cannot save an invalid indictment.” *United States v. Cecil*, 608 F.2d 1294, 1296 (9th
 32 Cir. 1979) (citation omitted); *Keith*, 605 F.2d at 464 (same).

1 2. The Government Has Failed to Present Evidence Sufficient to Satisfy
 2 § 1837(2)

3 The government also failed to introduce evidence at trial sufficient to satisfy § 1837(2).
 4 Because “act in furtherance” is not defined in the statute, courts have “look[ed] to the established
 5 common law meaning of ‘in furtherance of’ when interpreting the extraterritoriality provision” set
 6 forth in § 1837(2). *See, e.g., Luminati Networks Ltd. v. BIScience Inc.*, 2:18-CV-00483-JRG, 2019
 7 WL 2084426, at *9 (E.D. Tex. May 13, 2019).

8 “[T]he natural meaning of ‘in furtherance of’ is ‘furthering, advancing or helping forward.’”
 9 *United States v. Hector*, 474 F.3d 1150, 1157 (9th Cir. 2007) (quoting *United States v. Castillo*, 406
 10 F.3d 806, 813–14 (7th Cir. 2005)); *see also United States v. Rios*, 449 F.3d 1009, 1112 (9th Cir.
 11 2006) holding that “act in furtherance” must be “intended to . . . promote or facilitate the [charged
 12 crime].”). While an act in furtherance need not “be criminal in character,” it must be an “overt act”
 13 manifesting “that the conspiracy is at work.” *Yates v. United States*, 354 U.S. 298, 334 (1957)
 14 (citation omitted), *overruled on other grounds by Burks v. United States*, 437 U.S. 1 (1978). And the
 15 overt act cannot be “a project still resting solely in the minds of the conspirators [] or a fully completed
 16 operation no longer in existence.” *Id.* In brief, the government must “show[] a specific ‘nexus’
 17 between the particular [overt act] and the particular . . . crime at issue.” *Hector*, 474 F.3d at 1157.
 18 “In practical terms, this means the government must ‘present a viable theory as to how the [act]
 19 furthered the [offense].’” *Id.* (quoting *Castillo*, 406 F.3d at 815). That is, the act must “further[] an
 20 independent . . . offense,” and the government must exclude the possibility that the act was in
 21 furtherance of some “other, perhaps legitimate, purposes.” *United States v. Mann*, 389 F.3d 869,
 22 879–80 (9th Cir. 2004) (citation omitted).

23 The government’s evidence at trial established two events that occurred in the United States:
 24 the CASPA job fair and the KLA meeting, both in October 2016. Neither event, however, was
 25 sufficient to establish that “an act in furtherance of the offense[s] was committed in the United
 26 States.” 18 U.S.C. § 1837(2). Instead, both events were in furtherance of Jinhua’s business activities

1 after the completion of the charged offenses—not the allegedly unlawful conduct occurring at
 2 UMC.²⁰

3 Agent Wu testified that the presentation at CASPA was exclusively a “Jinhua recruitment
 4 event”; no job opportunities at UMC were advertised. (Trial Tr., Vol. IV, at 637:02-637:06, 643:09-
 5 645:11, 648:19-648:21.) Jinhua’s plans discussed at CASPA were purely “aspirational,” consisting
 6 of a “fab facility to be created in the future,” hopefully by 2020. (*Id.* at 637:18-637:22.) Likewise,
 7 Jinhua’s recruitment plans reflected its projected hiring needs by 2020. (*Id.* at 642:07-642:14.)

8 Similarly, the “purpose” of the KLA meeting was for Jinhua to “introduce themselves” to
 9 KLA, “to hear about” KLA’s “tool offerings,” and to give KLA “a status update on the projects” at
 10 Jinhua—there was no UMC aspect to the meeting and no evidence suggests that any Micron
 11 technology was discussed, revealed, or relied upon by any participant in the meeting.²¹ (Trial Tr.,
 12 Vol. XVII, at 3096:06-3096:11.) Like at CASPA, Jinhua’s presentation was entirely about its
 13 planned future facility that had a projected “move-in” date of July 2018. (*Id.* at 3116:18-3122:04.)

14 The government’s evidence about the CASPA job fair and KLA meeting fails to satisfy
 15 § 1837(2). Importantly, both events were purportedly about Jinhua’s future fab yet to be built.
 16 CASPA was about hiring employees to work at the facility, and the KLA meeting was about
 17 implementing the tools with which those employees would work. Neither event had anything to do
 18 with the alleged trade secret theft and use by UMC Project M employees working at UMC’s Taiwan
 19 fab. Indeed, the charged offenses were to be completed by the time the tools or employees became

20 Additionally, the government has not demonstrated that either of these alleged acts in
 21 furtherance of the offenses were committed by someone with knowledge of the offenses. *See Lee v.*
22 United States, 106 F.2d 906, 907 (9th Cir. 1939) (“No evidence discloses that appellant was a party
 23 to the formation of the conspiracy, and there is no evidence to show that when he committed the
 24 overt acts he had knowledge of such a conspiracy.”). As explained above, Mr. Chen was not a
 25 participant in the alleged criminal acts and he lacked knowledge of said acts. *See supra* § III.C.1.
 26 And the government has not presented any evidence about Albert Wu’s knowledge or participation
 27 in the charged offenses. The government cannot rely on innocent actions by innocent actors to
 28 establish an essential element of the offenses.

21 To be sure, Mr. Trafas testified that he understood there to be “sales opportunities to UMC
 22 DRAM in Tainan.” (Trial Tr., Vol. XVII, at 3101:14-3101:20.) But while KLA and Mr. Trafas
 23 understandably wanted to sell tools to both UMC and Jinhua, the meeting that occurred in the United
 24 States was only about the opportunity to sell tools to Jinhua. The UMC negotiations were conducted
 25 separately by the “KLA team in Taiwan.” (*Id.* at 3123:07-3123:09.)

1 relevant—the latest possible completion of the charged offenses was Jinhua’s knowing possession
 2 of the alleged trade secrets. 18 U.S.C. §§ 1831, 1832. Therefore, Jinhua’s attempt to hire employees
 3 at CASPA and purchase tools from KLA were, at most, merely acts “meant to allow [Jinhua] to enjoy
 4 the fruits of [its] crime[s]” as alleged in the Indictment—they were not acts in furtherance of the
 5 charged offenses. *See United States v. Narum*, 577 F. App’x 689, 691 (9th Cir. 2014) (holding that
 6 acts “meant to allow [the defendant] to enjoy the fruits of his crime” were not “in furtherance of his
 7 scheme to defraud”); *United States v. Wood*, 259 F. App’x 48, 49–50 (9th Cir. 2007) (holding that a
 8 defendant’s use of funds stolen in the charged conspiracy was not an act “in furtherance” of the
 9 conspiracy); *United States v. Kaplan*, 554 F.2d 958, 965 (9th Cir. 1977). They did not “promote or
 10 facilitate” UMC’s DRAM development, or, *a fortiori*, the alleged conspiracy or trade secret theft.
 11 *Rios*, 449 F.3d at 1112.²² Therefore, Jinhua is entitled to acquittal because the government cannot
 12 establish that any “act in furtherance of the offense was committed in the United States.” 18 U.S.C.
 13 § 1837(2).

14 3. Extraterritorial Application of §§ 1831 and 1832 Would Violate Due Process

15 Even if § 1837(2) were both sufficiently alleged and proved at trial, extraterritorial
 16 application of §§ 1831 and 1832 to Jinhua would violate constitutional due process. Every alleged
 17 criminal act proven at trial occurred in Taiwan (or, possibly, China). The government reaches too far
 18 in seeking to use Jinhua’s attendance at a job fair and a meeting about tools as a jurisdictional hook
 19 for convicting Jinhua based on the alleged theft of trade secrets that occurred wholly in Taiwan.

20 In addition to the requirement that Congress “make clear its intent to give extraterritorial
 21 effect to its statutes . . . , as a matter of constitutional law, . . . application of the statute to the acts in
 22 question [cannot] violate the due process clause of the fifth amendment.” *United States v. Davis*, 905
 23

24 ²² Even in the related civil context, courts have not found § 1837(2) satisfied by domestic acts
 25 as tenuously connected to the alleged offense as here. Although an “act in furtherance” need not be
 26 independently wrongful, in practice, courts have found that § 1837(2) was satisfied only where the
 27 “act in furtherance” was independently wrongful and a material component of the alleged offense.
 28 *See, e.g., Motorola Solutions, Inc. v. Hytera Communications Corp. Ltd.*, 436 F. Supp. 3d 1150, 1165
 (N.D. Ill. 2020) (holding that it was “undisputed throughout trial that Defendants have advertised,
 promoted, and marketed products embodying the allegedly stolen trade secrets domestically at
 numerous trade shows.”).

1 F.2d 245, 248 (9th Cir. 1990) (citation omitted). Due process requires a “sufficient nexus between
 2 the defendant and the United States, so that such application would not be arbitrary or fundamentally
 3 unfair.” *Id.* at 248–49 (citation omitted). This nexus requirement “ensures that a United States court
 4 will assert jurisdiction only over a defendant who ‘should reasonably anticipate being haled into
 5 court’ in this country.” *United States v. Klimavicius-Viloria*, 144 F.3d 1249, 1257 (9th Cir. 1998)
 6 (quoting *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286, 297 (1980)).

7 Even if the wrongdoing occurred as the government alleges, Jinhua’s connection to the
 8 United States is too tenuous to comport with Due Process. While the government has introduced
 9 evidence about harm to Micron, it has offered no evidence permitting the conclusion that Jinhua was
 10 aware of any harmful effect on Micron in the United States. Even assuming that Mr. Chen knew
 11 about the alleged trade secrets, there is no evidence that Mr. Chen understood that the owner of the
 12 allegedly stolen trade secrets was Micron Technology—the United States parent company of Micron
 13 Memory Taiwan Co. Ltd., that was his former employer. (Trial Tr., Vol. I, at 62:08-62:21.) In any
 14 event, Jinhua’s participation in CASPA and the KLA meeting occurred before Mr. Chen became its
 15 president, at which time there was not even an arguable basis to impute his conduct and knowledge
 16 to Jinhua. *See supra* § III.C.1. Therefore, due process requires that the Court enter a judgment of
 17 acquittal.

18 **IV. CONCLUSION**

19 On the record before this Court, no rational trier of fact could find guilty beyond a reasonable
 20 doubt as to any of the Counts. Accordingly, this Court should grant Jinhua’s motion for a judgment
 21 of acquittal and bring this baseless prosecution to an end.

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 23
 24

25 By: _____ */s/ Jack P. DiCanio*
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